

# EXHIBIT 44

## (Part 1)

# WEST'S ANALYSIS OF AMERICAN LAW

2021 Edition

WITH KEY NUMBER CLASSIFICATIONS



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## EXPLANATION OF KEY NUMBER ANALYSIS

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The West Key Number analysis of American law is a scheme whereby the entire body of American law has been conceptualized and arranged in an orderly and logical way. It is easily the most important scheme of its type and has long been an essential tool for case law research. The application of this scheme to West's digests and to WESTLAW and West's CD-ROM products allows ready access to all published decisions.

The Key Number analysis contains about four hundred major topics, each one of which is further subdivided. There are over 100,000 individual Key Numbers used in the arrangement. Following is an explanation of the method by which individual digest paragraphs are distributed among the various topics and individual Key Numbers.

The scheme is based upon the following general categories:

- (1) PERSONS
- (2) PROPERTY
- (3) CONTRACTS
- (4) TORTS
- (5) CRIMES
- (6) REMEDIES
- (7) GOVERNMENT

The single words denoting the categories are to be understood as if each was preceded by the words, "Matters Relating to." Thus, category 1, as representing all matters relating to persons, includes everything incident to or connected with the existence and protection by the law of all persons, natural or artificial, and of every distinct class of persons, their relations, rights, and obligations of a personal nature, combination of persons in partnerships, associations, and companies, and the various classes of occupations. So, category 2 includes not only the subjects of rights of property, but also the various estates therein, and rights and obligations in respect thereof, and whatever is primarily incident to or connected with property, as conveyances

and other modes of acquiring and transferring it.

The order in which these categories are enumerated above furnishes a general rule, easily applied, for the distribution of the matter among the various topics and their subdivisions, by simply following the order of precedence in placing matters capable of being included under two or more topics. Thus, a digest may contain matters relating to infants, in respect to (1) protection of person; (2) disposition of property; (3) disability to contract; (4) liability for torts; (5) responsibility for crime; (6) capacity to sue or defend; (7) eligibility for office. The matters here enumerated correspond to the several categories, and most of them might be considered as presenting a question as to whether the matter should be placed under the topic "Infants" or under some other topic. The rule of precedence stated above assigns them all to "Infants," because that topic, as designating the class of persons affected, is within category 1. The rule is applied in like manner to all matters relating to other classes of persons, under such topics as "Mental Health," "Marriage and Cohabitation," "Convicts." The subdivision and arrangement of the matter under the respective topics also follow, as closely as practicable, the same order of precedence, generally using as subheads, etc., the terms denoting the categories, expanded or otherwise modified to suit the requirements of the particular subject.

The operation of the rule of precedence may be further illustrated by its application to a subject in another category, such as negligence, which, as a tort, is included in category 4. The liabilities for negligence of an infant (the personal incapacity being involved), or for negligence of an employer as to his employee (the personal relation being involved), are assigned to the appropriate topics belonging to category 1, "Infants" and "Labor and Employment," respectively; the liability for negligence as to the condition of demised premises (the

## EXPLANATION OF SCHEME

existence of the estate for years being involved) is assigned to the topic including that estate belonging to category 2, "Landlord and Tenant"; and so of every case of negligence involving any obligation of a personal, property, or contract nature. This leaves for the "Negligence" only matters arising between "strangers," independent of any distinctions peculiar to classes of persons or species of property or peculiar rights or obligations incident to either or to contracts relating thereto. As to the matters so included, the topic "Negligence" covers them fully,—what constitutes actionable negligence; the doctrine of proximate cause; and contributory negligence, including imputed and comparative negligence. And, further, it includes, by reason of its precedence over subsequent categories, matters which might belong to them, such as actions for negligence and procedure therein, and criminal responsibility for negligence.

This rule of precedence is subject, of course, to exceptions, and is not applied contrary to established usage or reasons of practical convenience. Thus, the capacity of a person—infant, married woman, alien—to make a deed or contract is placed, by this rule, and by usage, under the topic including the class of persons; consistency and the rule would also place there the capacity of such person to make a will, but usage places it under the topic "Wills," and it is apparent that such matter cannot be separated conveniently from questions of testamentary capacity and undue influence. But where no usage or reason to the contrary exists, there remains a wide field for the application of the rule.

In the development of the following scheme, considerations of convenience in doing the work, and consistency in the result, made it desirable that subjects of similar nature should be disposed of together, and in a manner as nearly identical as possible. For this purpose, the subjects to which the contents of a digest may relate, after being assigned to the different categories, are further divided, so far as necessary, into classes, and under each class the topics selected for the subjects in the class are arranged so as to bring together similar

subjects. This arrangement is set forth in full at the end of this explanation.

The terms employed to describe these subdivisions of the categories, including the titles used as topics, are all to be understood as preceded by the words "Matters Relating to," and are to be taken in a comprehensive sense. Thus "Burglary," as a topic, is not limited to its technical meaning at common law or under any particular statute, but includes every breaking of a building with criminal intent, even though it may be designated in the statute defining the offense as "Housebreaking," or "Breaking and Entering." Technical accuracy is very desirable in framing the paragraphs for a digest, but is not practicable in the selection of topics, especially for a general digest.

Many of the topics properly include matters belonging to more than one of the categories or classes above mentioned. Thus, several topics, such as "Assault and Battery," designate both a tort and a crime. No practical difficulty arises in such case, since, in the subdivisions, the matters are separated; as, under the topic mentioned, the private injury and the civil action, the public offense and the criminal prosecution, are distinct subdivisions, each of which is treated in that form as if it were a distinct topic. Such double topics are placed in the category or class to which the more important part belongs.

The selection or rejection of particular topics, where any such question has not been decided by usage or practical convenience, is determined in accordance with a principle or rule of general application. Thus, in category 1, "Persons," class 5, "Particular Occupations," the topics included cover or designate occupations which, because of their nature, the law has subjected to special regulations, obligations, or liabilities; rejecting those which are subject only to general regulations, such as licenses or occupation taxes, and to ordinary obligations or liabilities. So, in category 7, "Government," classes 4 and 5, the topics included which designate particular officers are the titles of officers having duties connected with the administration of the law; other

## EXPLANATION OF SCHEME

officers are included under general titles, such as "Public Employment," "States," "Counties," etc. Examination and comparison of the scope notes will disclose the principle or rule followed in particular instances.

The form adopted for particular topics in cases of divided usage is controlled by regard for uniformity as to topics of the same class. Thus, in category 1, class 2, "Particular Classes of Natural Persons," where each of the classes of persons is distinguished by the existence of a particular legal disability, the name of the particular class is preferred to the term denoting the disability or condition; i.e., "Infants" rather than "Infancy" is used. As between substantives and adjectives, the substantive is preferred, especially as the initial word of a topic, unless the adjective be the important or significant word. Thus, "Internal Revenue" is preferred to "Revenue." As to the use of the singular or plural form of the topics, in the absence of any settled usage, the rule adopted is to use the singular for titles of an abstract nature, the plural for the concrete. A ready test is made by prefixing to any title the words hereinbefore suggested as necessarily implied,—“Matters Relating to,”—which usually suggest the appropriate form.

In addition to the scope notes under the topics, subheads are given under each, exhibiting in another form its scope and extent. In this subclassification of the respective main topics, both the making and the use of the digest are facilitated by applying to subjects similar in their nature a like method of analysis, employing like terms to designate their subdivisions, and using a like order of arrangement of subdivisions, so far as practicable, giving due prominence to the peculiar features of each subject. Thus, the subclassification of all the various crimes is easily based on one general outline, with additions or omissions to adapt it to each; and so, to a greater or less extent, of contracts, torts, civil actions, criminal prosecutions, and nearly all other classes of subjects involved. The form of the arrangement is adapted to the quantity of matter to which it is to be applied, like terms being employed, under different topics, as subheads or subdivisions thereof, or as black-letter headings or subheadings, as any or all of these may be required.

Comparison of subdivisions will show this similarity of treatment of similar subjects, such as "Infants" and "Guardian and Ward" and "Executors and Administrators," "Principal and Agent" and "Labor and Employment."





## OUTLINE OF THE LAW

*Digest Topics are arranged for your convenience by Seven Main Divisions of Law.  
Complete alphabetical list of Digest Topics with topic numbers follows this section.*

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- 1. PERSONS**
- 2. PROPERTY**
- 3. CONTRACTS**
- 4. TORTS**
- 5. CRIMES**
- 6. REMEDIES**
- 7. GOVERNMENT**

### **1. PERSONS**

#### **RELATING TO NATURAL PERSONS IN GENERAL**

Alcoholic Beverages  
Civil Rights  
Dead Bodies  
Death  
Domicile  
Food  
Health  
Holidays  
Names  
Seals  
Signatures  
Sunday  
Time  
Weapons

#### **PARTICULAR CLASSES OF NATURAL PERSONS**

Absentees  
Aliens, Immigration, and Citizenship  
Chemical Dependents  
Convicts  
Human Trafficking and Slavery  
Indians  
Infants  
Mental Health  
Protection of Endangered Persons  
Spendthrifts

### **PERSONAL RELATIONS**

Adoption  
Attorneys and Legal Services  
Child Custody  
Child Support  
Executors and Administrators  
Guardian and Ward  
Labor and Employment  
Marriage and Cohabitation  
Parent and Child  
Principal and Agent  
Workers' Compensation

#### **ASSOCIATED AND ARTIFICIAL PERSONS**

Associations  
Corporations and Business Organizations  
Exchanges  
Finance, Banking, and Credit  
Partnership  
Religious Societies

### **PARTICULAR OCCUPATIONS**

Accountants  
Agriculture  
Antitrust and Trade Regulation  
Auctions and Auctioneers  
Aviation  
Bridges  
Brokers  
Carriers  
Commerce  
Detectives and Security Guards

## **OUTLINE OF THE LAW**

### **1. PERSONS—Cont'd**

#### **PARTICULAR OCCUPATIONS—Cont'd**

Electricity  
Explosives  
Factors  
Ferries  
Finance, Banking, and Credit  
Gas  
Hawkers and Peddlers  
Innkeepers  
Insurance  
Licenses  
Lobbying  
Manufactures  
Pilots  
Public Amusement and Entertainment  
Railroads  
Seamen  
Shipping  
Steam  
Telecommunications  
Towage  
Turnpikes and Toll Roads  
Urban Railroads  
Warehousemen  
Wharves

### **2. PROPERTY**

#### **NATURE, SUBJECTS, AND INCIDENTS OF OWNERSHIP IN GENERAL**

Abandoned and Lost Property  
Adjoining Landowners  
Confusion of Goods  
Property

#### **PARTICULAR SUBJECTS AND INCIDENTS OF OWNERSHIP**

Animals  
Annuities  
Automobiles  
Boundaries  
Cemeteries  
Common Lands  
Copyrights and Intellectual Property  
Crops  
Fences  
Fish  
Franchises  
Game  
Good Will  
Logs and Logging

Mines and Minerals  
Monopolies  
Party Walls  
Patents  
Property  
Public Lands  
Trademarks  
Water Law  
Woods and Forests

#### **PARTICULAR CLASSES OF ESTATES OR INTERESTS IN PROPERTY**

Charities  
Common Interest Communities  
Descent and Distribution  
Easements  
Landlord and Tenant  
Perpetuities  
Powers  
Property  
Trusts

#### **PARTICULAR MODES OF ACQUIRING OR TRANSFERRING PROPERTY**

Abandoned and Lost Property  
Abstracts of Title  
Adverse Possession  
Alteration of Instruments  
Assignments  
Chattel Mortgages  
Dedication  
Descent and Distribution  
Equitable Conversion  
Fraudulent Conveyances  
Gifts  
Lost Instruments  
Mortgages and Deeds of Trust  
Pledges  
Real Property Conveyances  
Secured Transactions  
Wills

### **3. CONTRACTS**

#### **NATURE, REQUISITES, AND INCIDENTS OF AGREEMENTS IN GENERAL**

Contracts  
Customs and Usages  
Frauds, Statute of  
Interest  
Usury

## OUTLINE OF THE LAW

### 3. CONTRACTS—Cont'd

#### PARTICULAR CLASSES OF AGREEMENTS

Bailment  
Bonds  
Champerly and Maintenance  
Commercial Paper  
Compromise, Settlement, and Release  
Covenants  
Deposits and Escrows  
Gaming and Lotteries  
Guaranty  
Implied and Constructive Contracts  
Indemnity  
Insurance  
Joint Ventures  
Principal and Surety  
Public Contracts  
Real Property Conveyances  
Rewards  
Sales  
Subscriptions

#### PARTICULAR CLASSES OF IMPLIED OR CONSTRUCTIVE CONTRACTS OR QUASI CONTRACTS

Account Stated  
Contribution  
Implied and Constructive Contracts

#### PARTICULAR MODES OF DISCHARGING CONTRACTS

Compromise, Settlement, and Release  
Novation  
Payment  
Subrogation  
Tender

### 4. TORTS

Assault and Battery  
Collision  
Conspiracy  
Conversion and Civil Theft  
False Imprisonment  
Forcible Entry and Detainer  
Fraud  
Libel and Slander  
Malicious Prosecution  
Negligence  
Nuisance  
Products Liability  
Property  
Seduction  
Torts  
Trespass

### 5. CRIMES

Abortion and Birth Control  
Adulteration  
Arson  
Assault and Battery  
Bribery  
Burglary  
Conspiracy  
Controlled Substances  
Counterfeiting  
Criminal Law  
Disorderly Conduct  
Disorderly House  
Disturbance of Public Assemblage  
Embezzlement  
Escape  
Extortion  
False Pretenses  
Fires  
Forgery  
Fraud  
Gaming and Lotteries  
Homicide  
Human Trafficking and Slavery  
Incest  
Insurrection and Sedition  
International Law  
Kidnapping  
Larceny  
Malicious Mischief  
Obscenity  
Obstructing Justice  
Perjury  
Prostitution  
Racketeer Influenced and Corrupt Organizations  
Receiving Stolen Goods  
Rescue  
Riot  
Robbery  
Sex Offenses  
Suicide  
Threats, Stalking, and Harassment  
Treason  
Unlawful Assembly  
Vagrancy

### 6. REMEDIES

#### REMEDIES BY ACT OR AGREEMENT OF PARTIES

Accord and Satisfaction  
Alternative Dispute Resolution  
Submission of Controversy

## **OUTLINE OF THE LAW**

### **6. REMEDIES—Cont'd**

#### **REMEDIES BY POSSESSION OR NOTICE**

Liens  
Lis Pendens  
Maritime Liens  
Mechanics' Liens  
Notice  
Salvage

#### **MEANS AND METHODS OF PROOF**

Acknowledgment  
Affidavits  
Estoppel  
Evidence  
Oath  
Privileged Communications and  
Confidentiality  
Records  
Witnesses

#### **CIVIL ACTIONS IN GENERAL**

Action  
Declaratory Judgment  
Election of Remedies  
Limitation of Actions  
Parties  
Set-Off and Counterclaim  
Venue

#### **PARTICULAR PROCEEDINGS IN CIVIL ACTIONS**

Abatement and Revival  
Appearance  
Costs, Fees, and Sanctions  
Creditors' Remedies  
Damages  
Exemptions  
Homestead  
Judgment  
Jury  
Motions  
Pleading  
Pretrial Procedure  
Process  
Reference  
Res Judicata  
Stipulations  
Trial

#### **PARTICULAR REMEDIES INCIDENT TO CIVIL ACTIONS**

Arrest  
Assistance, Writ of  
Bail  
Deposits in Court  
Injunction  
Judicial Sales  
Ne Exeat  
Receivers  
Recognizances  
Sequestration  
Undertakings

#### **PARTICULAR MODES OF REVIEW IN CIVIL ACTIONS**

Appeal and Error  
Audita Querela  
Certiorari  
Exceptions, Bill of  
New Trial  
Review

#### **ACTIONS TO ESTABLISH OWNER- SHIP OR RECOVER POSSESSION OF SPECIFIC PROPERTY**

Detinue  
Ejectment  
Entry, Writ of  
Interpleader  
Possessory Warrant  
Quieting Title  
Real Actions  
Replevin  
Trespass to Try Title

#### **FORMS OF ACTIONS FOR DEBTS OR DAMAGES**

Account, Action on  
Action on the Case  
Assumpsit, Action of  
Covenant, Action of

#### **ACTIONS FOR PARTICULAR FORMS OR SPECIAL RELIEF**

Account  
Cancellation of Instruments  
Divorce  
Partition  
Reformation of Instruments  
Specific Performance

**OUTLINE OF THE LAW**

**6. REMEDIES—Cont'd**

**CIVIL PROCEEDINGS OTHER  
THAN ACTIONS**

Habeas Corpus  
Mandamus  
Prohibition  
Quo Warranto  
Seire Facias  
Supersedeas

**SPECIAL CIVIL JURISDICTIONS  
AND PROCEDURE THEREIN**

Admiralty  
Bankruptcy  
Equity  
Federal Civil Procedure

**PROCEEDINGS PECULIAR TO  
CRIMINAL CASES**

Double Jeopardy  
Extradition and Detainers  
Fines  
Forfeitures  
Grand Jury  
Indictments and Charging Instruments  
Pardon and Parole  
Penalties  
Searches and Seizures  
Sentencing and Punishment

**7. GOVERNMENT**

**POLITICAL BODIES  
AND DIVISIONS**

Counties  
District of Columbia  
Municipal Corporations  
States  
Territories  
Towns  
United States

**SYSTEMS AND SOURCES  
OF LAW**

Administrative Law and Procedure  
Common Law  
Constitutional Law  
International Law  
Parliamentary Law  
Statutes

**LEGISLATIVE AND EXECUTIVE  
POWERS AND FUNCTIONS**

Bounties  
Census  
Commodity Futures Trading Regulation  
Currency Regulation  
Customs Duties  
Education  
Election Law  
Eminent Domain  
Environmental Law  
Highways  
Inspection  
Internal Revenue  
Pensions  
Postal Service  
Private Roads  
Public Assistance  
Public Contracts  
Public Utilities  
Securities Regulation  
Social Security  
Taxation  
Unemployment Compensation  
Water Law  
Weights and Measures  
Zoning and Planning

**JUDICIAL POWERS AND FUNCTIONS,  
AND COURTS AND THEIR  
OFFICERS**

Amicus Curiae  
Clerks of Courts  
Contempt  
Court Commissioners  
Courts  
Federal Courts  
Judges  
Justices of the Peace  
Removal of Cases  
Reports  
United States Magistrate Judges

**CIVIL SERVICE, OFFICERS, AND  
INSTITUTIONS**

Asylums and Assisted Living Facilities  
Attorney General  
Coroners  
District and Prosecuting Attorneys  
Election Law  
International Law  
Newspapers  
Notaries  
Prisons  
Public Employment

**OUTLINE OF THE LAW**

**7. GOVERNMENT—Cont'd**

**CIVIL SERVICE, OFFICERS, AND  
INSTITUTIONS—Cont'd**

Registers of Deeds  
Sheriffs and Constables  
United States Marshals

**MILITARY AND NAVAL SERVICE  
AND WAR**

Armed Services  
Military Justice  
Militia  
War and National Emergency

## DIGEST TOPICS

*See, also, Outline of the Law by Seven Main Divisions of Law  
preceding this section.*

*The topic numbers shown below may be used in WESTLAW searches for cases  
within the topic and within specified key numbers.*

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1 Abandoned and Lost Property	43 Asylums and Assisted Living Facilities	92 Constitutional Law
2 Abatement and Revival	46 Attorney General	93 Contempt
4 Abortion and Birth Control	46H Attorneys and Legal Services	95 Contracts
5 Absentees	47 Auctions and Auctioneers	96 Contribution
6 Abstracts of Title	48 Audita Querela	96H Controlled Substances
8 Accord and Satisfaction	48A Automobiles	97C Conversion and Civil Theft
9 Account	48B Aviation	98 Convicts
10 Account, Action on	49 Bail	99 Copyrights and Intellectual Property
11 Account Stated	50 Bailment	100 Coroners
11A Accountants	51 Bankruptcy	101 Corporations and Business Organizations
12 Acknowledgment	58 Bonds	102 Costs, Fees, and Sanctions
13 Action	59 Boundaries	103 Counterfeiting
14 Action on the Case	60 Bounties	104 Counties
15 Adjoining Landowners	63 Bribery	105 Court Commissioners
15A Administrative Law and Procedure	64 Bridges	106 Courts
16 Admiralty	65 Brokers	107 Covenant, Action of
17 Adoption	67 Burglary	108 Covenants
18 Adulteration	69 Cancellation of Instruments	108H Creditors' Remedies
20 Adverse Possession	70 Carriers	110 Criminal Law
21 Affidavits	71 Cemeteries	111 Crops
23 Agriculture	72 Census	111H Currency Regulation
23H Alcoholic Beverages	73 Certiorari	113 Customs and Usages
24 Aliens, Immigration, and Citizenship	74 Champerty and Maintenance	114 Customs Duties
25 Alteration of Instruments	75 Charities	115 Damages
25T Alternative Dispute Resolution	76 Chattel Mortgages	116 Dead Bodies
27 Amicus Curiae	76A Chemical Dependents	117 Death
28 Animals	76D Child Custody	118A Declaratory Judgment
29 Annuities	76E Child Support	119 Dedication
29T Antitrust and Trade Regulation	78 Civil Rights	122A Deposits and Escrows
30 Appeal and Error	79 Clerks of Courts	123 Deposits in Court
31 Appearance	82 Collision	124 Descent and Distribution
34 Armed Services	83 Commerce	125 Detectives and Security Guards
35 Arrest	83E Commercial Paper	126 Detinue
36 Arson	83H Commodity Futures Trading Regulation	129 Disorderly Conduct
37 Assault and Battery	83T Common Interest Communities	130 Disorderly House
38 Assignments	84 Common Lands	131 District and Prosecuting Attorneys
40 Assistance, Writ of	85 Common Law	132 District of Columbia
41 Associations	89 Compromise, Settlement, and Release	
42 Assumpsit, Action of	90 Confusion of Goods	
	91 Conspiracy	



**DIGEST TOPICS**

133	Disturbance of Public Assemblage	195	Guaranty	257	Mechanics' Liens
134	Divorce	196	Guardian and Ward	257A	Mental Health
135	Domicile	197	Habeas Corpus	258A	Military Justice
135H	Double Jeopardy	198	Hawkers and Peddlers	259	Militia
141	Easements	198H	Health	260	Mines and Minerals
141E	Education	200	Highways	265	Monopolies
142	Ejectment	201	Holidays	266	Mortgages and Deeds of Trust
142T	Election Law	202	Homestead	267	Motions
143	Election of Remedies	203	Homicide	268	Municipal Corporations
145	Electricity	204T	Human Trafficking and Slavery	269	Names
146	Embezzlement	205H	Implied and Constructive Contracts	271	Ne Exeat
148	Eminent Domain	207	Incest	272	Negligence
149	Entry, Writ of	208	Indemnity	274	Newspapers
149E	Environmental Law	209	Indians	275	New Trial
149T	Equitable Conversion	210	Indictments and Charging Instruments	276	Notaries
150	Equity	211	Infants	277	Notice
151	Escape	212	Injunction	278	Novation
156	Estoppel	213	Innkeepers	279	Nuisance
157	Evidence	216	Inspection	280	Oath
158	Exceptions, Bill of	217	Insurance	281	Obscenity
160	Exchanges	218	Insurrection and Sedition	282	Obstructing Justice
162	Executors and Administrators	219	Interest	284	Pardon and Parole
163	Exemptions	220	Internal Revenue	285	Parent and Child
164	Explosives	221	International Law	286	Parliamentary Law
164T	Extortion	222	Interpleader	287	Parties
166	Extradition and Detainers	226H	Joint Ventures	288	Partition
167	Factors	227	Judges	289	Partnership
168	False Imprisonment	228	Judgment	290	Party Walls
170	False Pretenses	229	Judicial Sales	291	Patents
170A	Federal Civil Procedure	230	Jury	294	Payment
170B	Federal Courts	231	Justices of the Peace	295	Penalties
171	Fences	231E	Kidnapping	296	Pensions
172	Ferries	231H	Labor and Employment	297	Perjury
172H	Finance, Banking, and Credit	233	Landlord and Tenant	298	Perpetuities
174	Fines	234	Larceny	300	Pilots
175	Fires	237	Libel and Slander	302	Pleading
176	Fish	238	Licenses	303	Pledges
178	Food	239	Liens	305	Possessory Warrant
179	Forceful Entry and Detainer	241	Limitation of Actions	306	Postal Service
180	Forfeitures	242	Lis Pendens	307	Powers
181	Forgery	244H	Lobbying	307A	Pretrial Procedure
183	Franchises	245	Logs and Logging	308	Principal and Agent
184	Fraud	246	Lost Instruments	309	Principal and Surety
185	Frauds, Statute of	248	Malicious Mischief	310	Prisons
186	Fraudulent Conveyances	249	Malicious Prosecution	311	Private Roads
187	Game	250	Mandamus	311H	Privileged Communications and Confidentiality
188	Gaming and Lotteries	251	Manufactures	313	Process
190	Gas	252	Maritime Liens	313A	Products Liability
191	Gifts	253	Marriage and Cohabitation	314	Prohibition
192	Good Will			315	Property
193	Grand Jury			315H	Prostitution
				315P	Protection of Endangered Persons

**DIGEST TOPICS**

315T Public Amusement and Entertainment	349 Searches and Seizures	381 Towns
316E Public Assistance	349A Secured Transactions	382T Trademarks
316H Public Contracts	349B Securities	384 Treason
316P Public Employment	Regulation	386 Trespass
317 Public Lands	350 Seduction	387 Trespass to Try Title
317A Public Utilities	350H Sentencing and Punishment	388 Trial
318 Quieting Title	351 Sequestration	390 Trusts
319 Quo Warranto	352 Set-Off and Counterclaim	391 Turnpikes and Toll Roads
319H Racketeer Influenced and Corrupt Organizations	352H Sex Offenses	392 Undertakings
320 Railroads	353 Sheriffs and Constables	392T Unemployment Compensation
322 Real Actions	354 Shipping	393 United States
322H Real Property	355 Signatures	394 United States Magistrate Judges
Conveyances	356H Social Security	395 United States Marshals
323 Receivers	358 Specific Performance	396 Unlawful Assembly
324 Receiving Stolen Goods	359 Spendthrifts	396A Urban Railroads
325 Recognizances	360 States	398 Usury
326 Records	361 Statutes	399 Vagrancy
327 Reference	362 Steam	401 Venue
328 Reformation of Instruments	363 Stipulations	402 War and National Emergency
330 Registers of Deeds	365 Submission of Controversy	403 Warehousemen
332 Religious Societies	366 Subrogation	405 Water Law
334 Removal of Cases	367 Subscriptions	406 Weapons
335 Replevin	368 Suicide	407 Weights and Measures
336 Reports	369 Sunday	408 Wharves
336H Res Judicata	370 Supersedeas	409 Wills
337 Rescue	371 Taxation	410 Witnesses
339 Review	372 Telecommunications	411 Woods and Forests
340 Rewards	374 Tender	413 Workers' Compensation
341 Riot	375 Territories	414 Zoning and Planning
342 Robbery	377E Threats, Stalking, and Harassment	
343 Sales	378 Time	
344 Salvage	379 Torts	
346 Scire Facias	380 Towage	
347 Seals		
348 Seamen		





## TOPICS BY SPECIALTY

*Following is a list of digest topics grouped by area of practice. The topics listed are those whose scope is primarily related to the area in question. The subject notes and cross-reference found in the listed topics, and the Descriptive Word Index volumes of West's digests, should be consulted for topics containing related Key Numbers.*

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 198H Health  
 213 Innkeepers  
 233 Landlord and Tenant

## TOPICS BY SPECIALTY

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**1. ABANDONED AND LOST PROPERTY****1. ABANDONED AND LOST  
PROPERTY****SUBJECTS INCLUDED**

General nature of relinquishment of property or other rights of any kind by abandonment, as distinguished from dedication, surrender, waiver, etc.

Effect of abandonment by way of extinguishment of the title or right

Finding and taking of possession of lost goods of another, whereby the finder may acquire title thereto

Nature, requisites, and incidents of such finding and possession

Rights, duties, and liabilities of finders of lost goods as to the owners or losers and as to others in general

Disposition of unclaimed property in general; more particularly, escheat or other reversion of property, real or personal, to the state, for want of persons legally competent to hold or take it, or as being abandoned property or bona vacantia

Conveyance, release, and enforcement of the rights of the state

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Disabilities to inherit, etc., of particular classes of persons, see **ALIENS, IMMIGRATION, AND CITIZENSHIP, DESCENT AND DISTRIBUTION II(C), PARENT AND CHILD** ⚡102

Estrays, see **ANIMALS**

Lost instruments in writing, establishment of and actions on, see **LOST INSTRUMENTS**

Negotiable paper, rights of finders, see **COMMERCIAL PAPER**

Particular persons or personal relations, abandonment of, see specific topics

Particular species of property, rights, remedies, or proceedings, abandonment of, see specific topics

Rewards for recovery of lost goods, etc., see **REWARDS**

Sales of lost goods, see **SALES**

Wrecks and vessels and goods derelict at sea, see **SHIPPING**

**I. IN GENERAL,** ⚡21–50.

**II. UNCLAIMED PROPERTY; ESCHEAT,** ⚡51–66.

**I. IN GENERAL.**

21. In general.

22. Abandonment and abandoned property in general.

23. — In general.

24. — Intent to abandon.

25. — Acts and omissions constituting abandonment.

26. — Rehabilitation of abandoned property.

27. — Operation and effect of abandonment.

28. Lost or mislaid property.

29. Found property.

30. — In general.

31. — Rights and liabilities of finder as to owner.

32. — Title and rights of finder as to third persons.

33. — Title and rights of finders inter se.

34. Treasure trove.

35. Evidence.

36. — In general.

37. — Presumptions, inferences, and burden of proof.

38. — Admissibility.

39. — Degree of proof.

40. — Weight and sufficiency.

41. Questions of law or fact.

**II. UNCLAIMED PROPERTY; ESCHEAT.**

51. In general.

52. Constitutional and statutory provisions.

53. Interjurisdictional issues; what law governs.

54. Relation between state and federal law; preemption.

55. Property subject.

56. Grounds.

57. Enforcement and administration.

58. — In general.

59. — Ownership, custody, and use of property.

60. — Reports and lists; notice.

61. — Disposition of property; claims and proceedings.

**1. ABANDONED AND LOST PROPERTY****II. UNCLAIMED PROPERTY;  
ESCHEAT.**(Cont'd)

- 62. — Exhaustion of remedies.
- 63. — Sale of property.
- 64. — Monetary relief; damages and interest.
- 65. Third-party finders; contracts.
- 66. Immunity.

**2. ABATEMENT AND REVIVAL****SUBJECTS INCLUDED**

Suspension or defeat of civil actions in general by matters affecting the procedure merely, not the merits of the cause of action

Grounds of such abatement of actions, more particularly—

Want of jurisdiction of the court

Bringing more than one action for the same cause

Defects or irregularities in bringing an action

Death or disability of parties, occurring either before or after action is brought

Necessity of pleading or otherwise taking advantage of matter in abatement, and effect of failure to do so

Revival of actions which survive

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Criminal prosecutions, abatement of, see **CRIMINAL LAW**

Particular kinds of actions and of civil remedies other than actions, abatement of, see specific topics

Requisites and sufficiency of pleas in abatement in civil cases, see **PLEADING**

Rights of action by or against personal representatives, see **EXECUTORS AND ADMINISTRATORS**

Substitution of parties in pending actions, see **PARTIES**

**I. OBJECTIONS TO JURISDICTION,**  
⌋1–3.

**II. ANOTHER ACTION PENDING,**  
⌋4–17.

**III. DEFECTS AND OBJECTIONS AS TO  
PARTIES AND PROCEEDINGS,**  
⌋18–40.

**IV. TRANSFER OR DEVOLUTION OF  
TITLE, RIGHT, INTEREST, OR LI-  
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**V. DEATH OF PARTY AND REVIVAL  
OF ACTION,** ⌋48–77.

(A) **ABATEMENT OR SURVIVAL OF  
ACTION,** ⌋48–70.

(B) **CONTINUANCE OR REVIVAL OF  
ACTION,** ⌋71–77.

**VI. WAIVER OF GROUNDS OF ABATE-  
MENT AND TIME AND MANNER  
OF PLEADING IN GENERAL,**  
⌋78–88.

**I. OBJECTIONS TO JURISDICTION.**

- 1. Want of jurisdiction as ground of abatement.
- 2. Jurisdiction of the person.
- 3. Necessity and mode of making objection.

**II. ANOTHER ACTION PENDING.**

- 4. Ground of abatement in general.
- 5. Nature of other action or proceeding.
- 6. Priority of other action.
- 7. Pendency of other action.
- 8. Identity of cause of action, issues, or relief.
  - (1). In general.
  - (2). Identity of causes and issues.
  - (3). Action on judgment and on original cause of action.
  - (4). Identity of relief sought.
  - (5). Ability to obtain relief in former action.
  - (6). Cause of action accruing after commencement of first action.
  - (7). Former action instituted by defendant.
  - (8). Ability to set off claim or make defense in former action.
  - (9). Actions between partners and concerning partnership.
- 9. Identity of parties.
- 10. Action in different jurisdiction.
- 10.1. — In general.
- 11. — Court of same state.

**2. ABATEMENT AND REVIVAL****II. ANOTHER ACTION PENDING.(Cont'd)**

- 12. — State court or United States court.
- 13. — Court of different state or country.
- 14. Defects in other action.
- 15. Dismissal or other termination of other action.
- 16. Appeal or other proceeding for review in other action.
- 17. Necessity and mode of making objection.

**III. DEFECTS AND OBJECTIONS AS TO PARTIES AND PROCEEDINGS.**

- 18. Nature or form of action.
- 19. Nonperformance of condition precedent.
- 20. Premature action.
- 21. Fictitious plaintiff.
- 22. Disability or incapacity to sue.
- 23. Plaintiff not real party in interest.
- 24. Action in name of person deceased.
- 25. Disability or privilege of defendant.
- 26. Action against person deceased.
- 27. Nonjoinder of party.
- 28. Misjoinder of parties.
- 29. Misnomer or misdescription of party.
- 30. Defects or irregularities in process or service.
- 31. Variance between process and pleading.
- 32. Defects or irregularities in pleadings or other proceedings.
- 33. Disability of party pending suit in general.
- 34. Marriage of female party pending suit.
- 35. Removal of disability pending suit.
- 36. Reorganization or consolidation of corporation.
- 36.1. — In general.
- 37. — Cause of abatement.
- 38. — Revival against new corporation.
- 39. Dissolution of corporation.
- 40. Necessity and mode of making objection.

**IV. TRANSFER OR DEVOLUTION OF TITLE, RIGHT, INTEREST, OR LIABILITY.**

- 41. Plaintiff's title, right, or interest in general.
- 42. Defendant's title, interest, or liability in general.
- 43. Insolvency or bankruptcy of individual party.
- 44. Insolvency, bankruptcy, or receivership of corporation.

**IV. TRANSFER OR DEVOLUTION OF TITLE, RIGHT, INTEREST, OR LIABILITY.(Cont'd)**

- 45. Termination or devolution of representative or official capacity.
- 46. Necessity and mode of making objection.
- 47. Continuance or revival by or against successor in interest.

**V. DEATH OF PARTY AND REVIVAL OF ACTION.****(A) ABATEMENT OR SURVIVAL OF ACTION.**

- 48. Death as cause of abatement in general.
- 49. What law governs.
- 50. Statutory provisions.
- 51. Causes of action which survive.
- 52. — In general.
- 53. — Actions on contract.
- 54. — Actions for personal injuries.
- 55. — Actions for injuries to property.
  - (1). In general.
  - (2). Trespass and conversion.
  - (3). Fraud.
  - (4). Actions to enforce liability of corporate stockholders and officers.
- 56. — Actions relating to specific property.
- 57. — Statutory actions.
- 58. Actions and proceedings which abate.
  - (.5). In general.
  - (1). Actions for personal injuries.
  - (2). Actions relating to property.
- 59. Death of plaintiff.
- 59.1. — In general.
- 60. — Sole plaintiff.
- 61. — One of two or more plaintiffs.
- 62. Death of defendant.
- 62.1. — In general.
- 63. — Sole defendant.
- 64. — One of two or more defendants.
- 65. Death of party in representative or official capacity.
- 66. Death of both parties.
- 67. Death after verdict, decision, or interlocutory judgment.
- 68. Death after final judgment.
- 69. Death pending appeal or other review.
- 70. Necessity and mode of suggesting death as cause of abatement.

## 2. ABATEMENT AND REVIVAL

### (B) CONTINUANCE OR REVIVAL OF ACTION.

71. Nature and necessity.
72. Persons required or entitled to continue or revive action.
  - (1). In general.
  - (2). Persons by whom action continued or revived in general.
  - (3). Ejectment or trespass to try title.
  - (4). Partition.
  - (5). Revival by persons next in interest.
  - (6). Revival by legatee or by administrator.
  - (7). Revival by heir or by devisee.
  - (8). Revival by assignee of decedent.
  - (9). Right of assignee acquiring interest after death.
  - (10). Death of person suing in representative or official capacity.
  - (11). Right of defendant to revive suit.
73. Persons against whom action may be continued or revived.
74. Time of taking proceedings.
  - (1). In general.
  - (2). Revival after time limited.
  - (3). Time of suggesting death.
  - (4). Laches.
  - (5). What statute governs running of time.
  - (6). When time begins to run.
75. Application and proceedings thereon.
  - (1). In general.
  - (2). Issues raised or determined, and pleading and proof.
76. Order for continuance or revival.
77. Proceedings after continuance or revival.

### VI. WAIVER OF GROUNDS OF ABATEMENT AND TIME AND MANNER OF PLEADING IN GENERAL.

78. Defects and objections which may be waived.
79. Stipulations and other agreements.
80. Failure to make objection in general.
81. Time for making objection or filing plea.
82. Pleading out of order.
83. Demurring and proceedings thereon.
84. Pleading to merits and further proceedings.
85. Pleading in abatement and in bar.

### VI. WAIVER OF GROUNDS OF ABATEMENT AND TIME AND MANNER OF PLEADING IN GENERAL.(Cont'd)

86. Failure to insist on judgment on plea.
87. Waiver of matter arising after issue.
88. Waiver of failure to revive action.

## 4. ABORTION AND BIRTH CONTROL

### SUBJECTS INCLUDED

Causing or procuring miscarriage or premature delivery of a pregnant woman, and acts done for or in aid of such purpose

Right to and regulation of abortion, and limitations thereon

Substituted judgment and third-party rights

Fetal disposal and experimentation

Contraception and birth control

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

Civil liability therefor

### SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Damages and procedural aspects of an action for wrongful death, see DEATH

Homicide committed in attempting to procure abortion, see HOMICIDE

Feticide and infanticide, see HOMICIDE

Negligent or tortious performance resulting in injury or "wrongful life" to resulting child, or injury to parent, see HEALTH

Professional medical conduct and discipline, see HEALTH

100. Abortion in general.
101. What constitutes; definitions.
102. Right to abortion in general; choice.
103. Regulation in general.
104. Scope and standard of review.
105. Public policy and governmental interest.
106. Fetal age and viability; trimester.

**4. ABORTION AND BIRTH CONTROL**

- |   |  |
|---|--|
| <p>107. Reason or necessity for abortion in general.</p> <p>108. Health and safety of patient.</p> <p>109. Methods, modes and procedures.</p> <p>110. Clinics, facilities, and practitioners.</p> <p>111. Advertising and solicitation.</p> <p>112. Information and consent; counseling.</p> <p>113. Waiting period; delay.</p> <p>114. Rights of donor, partner or spouse.</p> <p>115. Minors and incompetents in general.</p> <p>116. Substitution and bypass; notice.</p> <p>117. — In general.</p> <p>118. — Waiting period; delay.</p> <p>119. — Approval by court; bypass in general.</p> <p>120. — Capacity and maturity.</p> <p>121. — Best interests of patient.</p> <p>122. — Health of patient; emergency.</p> <p>123. — Proceedings.</p> <p>124. Records; confidentiality.</p> <p>125. Disposal and experimentation.</p> <p>126. Funding and insurance.</p> <p>127. Civil liability and proceedings; injunction.</p> <p>128. Access, interference, and protests.</p> <p>129. — In general.</p> <p>130. — Remedies; injunction.</p> <p>131. — Crimes and prosecutions.</p> <p>132. Contraceptives and birth control.</p> <p>133. — In general.</p> <p>134. — Advertising; exhibition and display.</p> <p>135. — Possession or use.</p> <p>136. — Sale and distribution.</p> <p>137. — Emergency contraception; abortifacients.</p> <p>138. — Minors.</p> <p>138.5. — Family planning; funding and services.</p> <p>139. — Civil liability and proceedings; injunction.</p> <p>140. — Crimes and prosecutions.</p> <p>141. Abortion offenses; nature and elements.</p> <p>142. — In general.</p> <p>143. — Advertising and solicitation.</p> <p>144. — Information and consent; counseling.</p> <p>145. — Production, procurement or inducement in general.</p> | <p>146. — Methods, modes and procedures in general.</p> <p>147. — Instrument or tool.</p> <p>148. — Medication or noxious substance.</p> <p>149. — Minors; parental notification.</p> <p>150. — Disposal and experimentation.</p> <p>151. Attempts.</p> <p>152. Defenses.</p> <p>153. — In general.</p> <p>154. — Impossibility in general.</p> <p>155. — Absence of pregnancy.</p> <p>156. — Fetal age and viability; trimester.</p> <p>157. — Health of patient; necessity.</p> <p>158. — Consent of patient or guardian.</p> <p>159. — Immunity in general.</p> <p>160. — Professional status or license.</p> <p>161. Persons liable.</p> <p>162. Indictment and information.</p> <p>163. — In general.</p> <p>164. — Advertising and solicitation.</p> <p>165. — Information and consent; counseling.</p> <p>166. — Production, procurement or inducement in general.</p> <p>167. — Methods, modes and procedures in general.</p> <p>168. — Instrument or tool.</p> <p>169. — Medication or noxious substance.</p> <p>170. — Minors; parental notification.</p> <p>171. — Disposal and experimentation.</p> <p>172. — Attempts.</p> <p>173. — Issues, proof and variance.</p> <p>174. Evidence.</p> <p>175. — In general.</p> <p>176. — Presumptions and burden of proof.</p> <p>177. — Admissibility.</p> <p>178. — Dying declarations.</p> <p>179. — Weight and sufficiency of evidence.</p> <p>180. — Corroboration.</p> <p>181. Trial.</p> <p>182. — In general.</p> <p>183. — Questions for jury.</p> <p>184. — Instructions.</p> <p>185. — Verdict.</p> <p>186. Sentence and punishment.</p> |
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**5. ABSENTEES****5. ABSENTEES****SUBJECTS INCLUDED**

Persons residing out of the state or who have departed from the state, having no representative therein

Rights and liabilities of such persons in general

Control and protection of property of such persons

Legal proceedings affecting absentees

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Confiscation of property of absentees as public enemies, see WAR AND NATIONAL EMERGENCY

Nonresidence, absence, etc., as grounds for arrest, attachment or other special remedies, see ARREST, CREDITORS' REMEDIES, and other specific topics

Representation of absent parties in actions in general, see PARTIES, EQUITY

1. Power to regulate.
2. Who are absentees.
3. Statutory provisions.
4. Jurisdiction of courts.
5. Curators or other representatives.
6. Property and conveyances.
7. Actions.

**6. ABSTRACTS OF TITLE****SUBJECTS INCLUDED**

Brief statements of the history of the title to real property, and summaries of the conveyances or other instruments, and facts affecting the title to such property or subjecting it to incumbrances, liens or other liabilities, which are usually prepared to show the titles of vendors, mortgagors, etc.

Nature, requisites and incidents of such abstracts

Liabilities of those preparing or furnishing abstracts

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Insurance of titles, see INSURANCE

Rights and liabilities, in respect of such abstracts of parties to—

Mortgages, see MORTGAGES AND DEEDS OF TRUST

Sales, see REAL PROPERTY CONVEYANCES

1. Requisites, making, and sufficiency.
2. Abstract companies.
3. Rights, duties, and liabilities of examiners of title.

**8. ACCORD AND SATISFACTION****SUBJECTS INCLUDED**

Agreements for discharge of contracts or satisfaction for injuries by payment, performance, or delivery and acceptance of something different from what might legally be claimed

Nature, requisites, validity, operation, and effect of such agreements and of performance thereof

Pleading accord and satisfaction, and proof thereof as a defense

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Compromises by mutual concessions and agreements for settlement of balances, see COMPROMISE, SETTLEMENT, AND RELEASE

Relinquishment of rights or claims, see COMPROMISE, SETTLEMENT, AND RELEASE

1. Nature and requisites in general.
2. Subject-matter.
  - (.5). In general.
  - (1). Judgment.
  - (2). Matters covered by agreement or receipt.
3. Persons between whom made.
  - (.5). In general.

**9. ACCOUNT**

- (1). Accord and satisfaction accepted from third person.
  - (2). Satisfaction by one of joint debtors or wrongdoers.
  - (3). Authority of person accepting satisfaction.
4. Form of agreement of accord.
5. Consideration of accord in general.
6. Part payment.
7. — In general.
  - (1). In general.
  - (2). Statutory regulations.
  - (3). Effect of mistake as to amount.
  - (4). Payment by third person.
8. — Consideration in general.
  - (1). In general.
  - (2). Claims against insolvents.
9. — By bills, notes, or checks.
10. — Disputed or unliquidated claims.
  - (1). In general.
  - (2). Claims against county.
  - (3). Claims against municipality.
11. — Conditioned on acceptance as payment in full.
  - (1). In general.
  - (2). Remittances on condition.
  - (3). Effect of protest.
12. — Effect of receipt in full.
  - (1). In general.
  - (2). Effect of protest.
  - (3). Release under seal.
13. Conveyance or surrender of property, rights, or claims.
14. Giving additional or different security.
15. Execution of accord as satisfaction.
- 15.1. — In general.
16. — Necessity in general.
17. — Effect of accord without satisfaction.
18. — Sufficiency in general.
19. — Acceptance of new agreement.
20. Validity.
21. Rescission by parties.
22. Impeaching or setting aside.
  - (1). In general.
  - (2). Necessity of restoration of money received.
23. Operation and effect of satisfaction.
24. Rights and liabilities of parties as to third persons.

25. Pleading.
  - (.5). In general.
  - (1). Necessity of pleading specially.
  - (2). Sufficiency of allegations.
  - (3). Demurrer and replication.
  - (4). Issues and proof.
26. Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Sufficiency.
27. Questions for jury.

**9. ACCOUNT****SUBJECTS INCLUDED**

Actions to compel the rendering of accounts, more particularly common law actions of account or account render and similar statutory remedies and equitable actions of account, and operation and effect of accounts rendered and settled, either in such actions or by voluntary act of the parties

Nature and scope of the remedy to obtain an account in general

Grounds of such action and defenses thereto

By and against whom such actions may be maintained

Jurisdiction to compel accounting and proceedings therefor, and proceedings before auditors, referees, masters, etc.

Incidental relief

Judgments or decrees and enforcement thereof

Review of proceedings

Opening, correcting, surcharging, and falsifying accounts in general

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Accounts stated, actions on, see ACCOUNT STATED

Admissibility and effect of accounts in evidence, see EVIDENCE



**9. ACCOUNT**

Annexing or furnishing copies of accounts alleged in pleading, see PLEADING

Incidental to other relief, accounting as, see PRETRIAL PROCEDURE, INJUNCTION, PATENTS and other specific topics

Open accounts, actions on, see ACCOUNT, ACTION ON

Persons in particular relations to others or acting in particular fiduciary capacities, remedies for accounting by, see EXECUTORS AND ADMINISTRATORS, PRINCIPAL AND AGENT, PARTNERSHIP, TRUSTS, and other specific topics

Reference of actions involving accounts, see REFERENCE

Settlements of balance of mutual accounts, see COMPROMISE, SETTLEMENT, AND RELEASE

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**I. RIGHT OF ACTION AND DEFENSES,**  
⌘1–10.

**II. PROCEEDINGS AND RELIEF,**  
⌘11–22.

**III. OPERATION AND EFFECT OF ACCOUNTING,** ⌘24–26.

**I. RIGHT OF ACTION AND DEFENSES.**

1. Nature and grounds of right to an account.
2. Agreement to render account.
3. Joint ownership or interest in property or profits.
4. Fiduciary relations.
5. Mutual accounts.
6. Complicated transactions or circumstances.
7. Fraudulent or other wrongful acts or conduct.
8. Defenses.
9. Persons entitled to an account.
10. Persons liable to account.

**II. PROCEEDINGS AND RELIEF.**

11. Action of account or account render.
12. Equitable jurisdiction.
13. Equitable actions.
  - 13.1. — In general.
14. — Nature and scope of remedy.
15. — Limitations and laches.  
*See also LIMITATION OF ACTIONS.*
16. — Parties.
17. — Pleading.
  - (.5). In general.

**II. PROCEEDINGS AND RELIEF.**(Cont'd)

- (1). Bill, complaint, or petition.
- (2). Amendment.
- (3). Cross-bill.
- (4). Plea, answer, and replication.
- (5). Issues, proof, and variance.
18. — Evidence.
19. — Trial or hearing and interlocutory judgment or decree.
20. — Taking and stating account, and reference therefor.
  - (.5). In general.
    - (1). Reference and proceedings thereunder.
    - (2). Report and findings and proceedings thereon.
    - (3). Adjustment of account.
21. — Incidental relief.
22. — Final judgment or decree and review.

**III. OPERATION AND EFFECT OF ACCOUNTING.**

24. Conclusiveness of judicial settlement.
  25. Opening and correcting.
  26. Surcharging and falsifying.
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**10. ACCOUNT, ACTION ON**

**SUBJECTS INCLUDED**

Actions on open accounts, actions of book account or book debts, and similar statutory actions founded on accounts as distinguished from other forms of action

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto

By and against whom they may be maintained

Proceedings therein

Review of proceedings

Costs in such actions

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Actions to compel accounting, see ACCOUNT, and titles of persons liable to account

**11. ACCOUNT STATED**

Admissibility and effect of accounts and books of account, etc., in evidence, see EVIDENCE

Annexing or furnishing copies of accounts alleged in pleadings in general, see PLEADING

Effect of stating and settling accounts and actions on account stated, see ACCOUNT STATED

Reference of actions involving accounts, see REFERENCE

1. Open accounts in general.
  - 1.1. — In general.
2. — Nature and grounds of action.
3. — Requisites of account.
4. — Defenses.
5. — Filing or delivery of copy of account.
6. — Pleading.
  - (.5). In general.
    - (1). Declaration, complaint, or petition.
    - (2). Plea, answer, or affidavit of defense.
    - (3). Bill of particulars or copy of account.
    - (4). Amendment.
    - (5). Issues, proof, and variance.
7. — Evidence.
8. — Trial, judgment, and review.
9. Verified accounts.
  - 9.1. — In general.
10. — Nature and subject-matter.
11. — Requisites of affidavit.
12. — Conclusiveness of verification, and defenses.
13. — Pleading.
14. — Evidence.
15. — Trial, judgment, and review.
16. Book account or book debt.
  - 16.1. — In general.
17. — Nature and grounds of action.
18. — Charges in book.
19. — Defenses.
20. — Parties.
21. — Pleading.
22. — Evidence.
23. — Trial and judgment for account.

24. — Proceedings before auditors or referees.

25. — Final judgment and review.

**11. ACCOUNT STATED****SUBJECTS INCLUDED**

Obligations implied or imposed by law to pay the balance of an account rendered or stated between parties and admitted to be due, independent of an express promise of payment

Nature, requisites, incidents, operation and effect of such statements of accounts

Rights, liabilities, and remedies of the parties

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Accounting, proceedings to compel, and judicial settlement of accounts, see ACCOUNT and titles of persons, officers, etc., liable to account

Actions on accounts as such, see ACCOUNT, ACTION ON

Assumpsit, proceedings in actions of, see ASSUMPSIT, ACTION OF

Pleadings, accounts alleged in, annexed to, or filed with, see PLEADING

Settlements of mutual accounts between parties, see COMPROMISE, SETTLEMENT, AND RELEASE

1. Nature and subject-matter in general.
2. Persons between whom account may be stated.
3. Previous indebtedness and transactions.
4. Mode of stating and settling.
5. Assent of parties in general.
6. Implied assent of party to be charged.
  - (1). In general.
  - (2). Retention without objection in general.
  - (3). Account between bank and customer.
  - (4). Time of retention.
7. Scope and operation in general.

**11. ACCOUNT STATED**

8. Conclusiveness.
9. Obligation to pay balance.
11. Opening and correcting.
12. Surcharging and falsifying.
13. Vacating and setting aside.
14. Right of action.
15. Defenses.
16. Time to sue.  
*See also LIMITATION OF ACTIONS.*
17. Parties.
18. Pleading.
  - (1). In general.
  - (2). Issues, proof, and variance.
19. Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.
20. Trial and judgment.
  - (.5). In general.
  - (1). Questions for court or jury.
  - (2). Instructions.
  - (3). Findings and judgment.

**11A. ACCOUNTANTS****SUBJECTS INCLUDED**

Regulation and conduct of the profession of accountancy

License or certification of accountants

Contracts for accounting services and performance of such services

Duties and liabilities of accountants to those who employ them or to third persons

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Employee benefit and pension plans, see LABOR AND EMPLOYMENT

Securities laws, duties and liabilities under, see SECURITIES REGULATION

1. In general.
2. Constitutional and statutory provisions.

3. Regulation; license or certificate.
  - 3.1. — In general.
4. — Eligibility and qualifications.
5. — Discipline; suspension or revocation.
6. Contracts, employment, and compensation.
  - 6.1. — In general.
7. — Unlicensed persons.
8. — Performance of contract; duties and liabilities.
9. Duties and liabilities to third persons.
10. Actions.
  - 10.1. — In general.
11. — Damages.
12. — Costs and fees.

**12. ACKNOWLEDGMENT****SUBJECTS INCLUDED**

Formal declarations of the genuineness of an instrument in writing made by a person executing it, or proof of due execution of such an instrument, made by an attesting witness or other person, before a competent court or officer, to establish the validity of such instrument, or to entitle it to be admitted in evidence or to be recorded

Nature and necessity of making acknowledgment

Making, taking, form, and requisites of such acknowledgments

Form and requisites of certificates of acknowledgment

Amendment of defects in certificates

Conclusiveness and effect of acknowledgments and of certificates of acknowledgment

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Effect of record of acknowledgment with instrument, see RECORDS

Evidence, record or transcript of record of unacknowledged or defectively acknowledged instrument as, see EVIDENCE

I. NATURE AND NECESSITY, ¶1-7.

**12. ACKNOWLEDGMENT**

- II. TAKING AND CERTIFICATE, ⌘8-48.  
 III. OPERATION AND EFFECT, ⌘49-57.  
 IV. PLEADING AND EVIDENCE,  
 ⌘58-62.

**I. NATURE AND NECESSITY.**

1. Nature and functions in general.
2. What law governs.
3. Statutory provisions.
4. Instruments to be acknowledged or proved.
5. Unacknowledged instruments.
6. Defectively acknowledged instruments.
  - (1). In general.
  - (2). Deeds and conveyances.
  - (3). By married women.
7. Filling blanks or altering instrument without acknowledgment.

**II. TAKING AND CERTIFICATE.**

8. Nature of officer's act in general.
9. Place of taking.
10. Time of making.
11. Persons who may make acknowledgment.
12. Witnesses who may make proof.
13. Compelling acknowledgment or proof.
14. Authority to take.
  15. — In general.
  16. — Particular officers.
  17. — In other states.
  18. — In other countries.
  19. — Extraterritorial authority.
  20. — Disqualification of officer.
    - (1). In general.
    - (2). Grantee, mortgagee, or trustee.
    - (3). Agent, officer, or stockholder of party in interest.
21. — Taking by one of several grantees.
22. Ascertainment of identity of person making acknowledgment or proof.
23. Mode of taking acknowledgment.
  24. — In general.
  25. — Of married woman.
  26. — Of particular persons or officers.
27. Mode of taking proof.
28. Making and requisites of certificate.
  - 28.1. — In general.
29. — Making and form in general.
30. — Venue.
31. — Date.
32. — Recitals as to authority of officer.

**II. TAKING AND CERTIFICATE.(Cont'd)**

33. — Signature and seal.
34. — Record.
35. Contents of certificate.
  - 35.1. — In general.
36. — Matters certified in general.
  - (1). In general.
  - (2). Knowledge of officer as to identity of acknowledged.
37. — Acknowledgments of married women.
  - (1). In general.
  - (2). Separate examination and explanation.
38. — Acknowledgments of particular persons or officers.
39. Further certificate of authenticity and conformity to law.
40. Errors and defects in certificate.
41. — In general.
42. — Amendment.
43. Curing defects.
  - 43.1. — In general.
44. — Subsequent acknowledgment.
45. — Proof by witnesses.
46. — Judicial proceedings.
47. — Curative statutes.
48. Liability of officer defectively or falsely certifying acknowledgment.

**III. OPERATION AND EFFECT.**

49. Construction and operation of certificate in general.
50. Surplusage in certificate.
51. Unnecessary acknowledgments.
52. Authenticity of instrument in general.
53. Admissibility of instrument to record.
54. Admissibility of instrument in evidence.
55. Conclusiveness of certificate.
  - (1). In general.
  - (2). Certificates of acknowledgment by married women.
56. Grounds of impeaching or contradicting certificate.
57. Acknowledgment under laws of other state or foreign country.

**IV. PLEADING AND EVIDENCE.**

58. Pleading.

**12. ACKNOWLEDGMENT****IV. PLEADING AND EVIDENCE.**(Cont'd)

- 59. Presumptions and burden of proof.
- 60. Evidence of fact of acknowledgment.
- 61. Evidence to aid certificate.
- 62. Evidence to impeach or contradict certificate.
  - (.5). In general.
  - (1). Admissibility in general.
  - (2). Weight and sufficiency in general.
  - (3). Impeaching testimony by officer taking acknowledgment.
  - (4). Impeaching testimony by grantor or mortgagor.

**13. ACTION****SUBJECTS INCLUDED**

- Nature, grounds and incidents of civil actions in general
- What constitute causes of action and defenses in general
- Who are entitled to sue and to defend
- Distinctions between civil and criminal remedies and legal and equitable remedies, between actions on contract and actions of tort, and between particular forms of actions
- Cumulative and exclusive remedies
- Joinder and splitting of causes of action
- Consolidation and severance of actions
- Demand or notice before suit, leave to sue, and other conditions precedent
- Commencement, prosecution, and termination of actions in general
- Stay of proceedings in actions

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Administrative officers and agencies, proceedings of, and judicial review or enforcement thereof, see **ADMINISTRATIVE LAW AND PROCEDURE** and specific topics
- Admiralty, suits in, see **ADMIRALTY**
- Appearance in actions, see **APPEARANCE**

- Breach of contract, actions for, see **CONTRACTS, BONDS, COMMERCIAL PAPER**, and other specific topics
- Election between actions, see **ELECTION OF REMEDIES**
- Equity, suits in, see **EQUITY**
- Federal courts, civil procedure in, see **FEDERAL CIVIL PROCEDURE**
- Injuries to person or property, actions for, see **TORTS** and titles of particular wrongs
- Insolvent laws or bankrupt laws, proceedings under, see **BANKRUPTCY, CREDITORS' REMEDIES** ¶1183
- Other proceedings in actions, see **PLEADING, MOTIONS, TRIAL, JUDGMENT, COSTS** and other specific topics
- Particular classes of persons, actions by or against, see **ALIENS, IMMIGRATION, AND CITIZENSHIP, INFANTS**, and other specific topics—
  - Corporations, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**
  - Governments, see **UNITED STATES, STATES, TERRITORIES**
  - Other political or municipal bodies or officers, see **MUNICIPAL CORPORATIONS, COUNTIES, TOWNS, EDUCATION, PUBLIC EMPLOYMENT**
  - Partners, see **PARTNERSHIP**
  - Unincorporated associations and companies, see **ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS XV**
- Particular forms of action, see specific topics
- Particular forms of relief, actions for, see **DECLARATORY JUDGMENT, DIVORCE, EJECTMENT, REPLEVIN, SPECIFIC PERFORMANCE**, and other specific topics
- Particular kinds of property, actions involving or affecting, see **MINES AND MINERALS, WATER LAW, EASEMENTS, PATENTS**, and other specific topics
- Particular occupations or transactions, actions incident to, see **INSURANCE, CARRIERS, RAILROADS, SHIPPING**, and other specific topics
- Particular provisional or extraordinary remedies in actions, see **ARREST, CREDITORS' REMEDIES, INJUNCTION, RECEIVERS**, and other specific topics
- Particular remedies for correction of errors and review of decisions, see **EXCEP-**

**13. ACTION**

TIONS, BILL OF, NEW TRIAL, APPEAL AND ERROR and other specific topics

Parties to actions, see PARTIES

Penal actions, see PENALTIES

Pendency of action, effect of, see LIS PENDENS, ABATEMENT AND REVIVAL

Persons in particular personal relations, actions between, by or against, see MARRIAGE AND COHABITATION, EXECUTORS AND ADMINISTRATORS, LABOR AND EMPLOYMENT, and other specific topics

Place for bringing or trial of actions, see VENUE

Process in actions, see PROCESS

Submission of controversies without actions to —

Arbitrators, see ALTERNATIVE DISPUTE RESOLUTION

Courts, see SUBMISSION OF CONTROVERSY

Time limited for commencement of actions, see LIMITATION OF ACTIONS

Wills, proceedings for probate or contest, see WILLS

**I. GROUNDS AND CONDITIONS PRECEDENT, ¶1–15.**

**II. NATURE AND FORM, ¶16–37.**

**III. JOINDER, SPLITTING, CONSOLIDATION, AND SEVERANCE, ¶38–60.**

**IV. COMMENCEMENT, PROSECUTION, AND TERMINATION, ¶61–71.**

**I. GROUNDS AND CONDITIONS PRECEDENT.**

1. Nature and elements of cause of action and suspension of remedies.

2. Acts or omissions constituting causes of action in general.

3. Statutory rights of action.

4. Illegal or immoral transactions.

5. Criminal acts.

6. Moot, hypothetical or abstract questions.  
*Declaratory judgments, see DECLARATORY JUDGMENT.*

7. Motive in bringing action.

8. Frivolous or collusive actions.

9. Unnecessary or vexatious actions.

10. Conditions precedent in general.

11. Notice, demand, and tender.

12. Defenses in general.

**I. GROUNDS AND CONDITIONS PRECEDENT.(Cont'd)**

13. Persons entitled to sue.

14. Persons liable.

15. Same person plaintiff and defendant.

**II. NATURE AND FORM.**

16. Nature of remedy by action.

17. What law governs.

*Private international law, see INTERNATIONAL LAW ¶335. Law of foreign countries, see INTERNATIONAL LAW V(B)3, V(B)4.*

18. Civil or criminal.

19. Remedial or penal.

20. Action or special proceeding.

21. Legal or equitable.

21.1. — In general.

22. — Nature of action.

23. — Equitable relief in action at law.

24. — Equitable defenses in action at law.

25. — Under codes and practice acts.

(.5). In general.

(1). Abolition of distinction as to form.

(2). Nature of action.

(3). Equitable and legal relief in same action.

(4). Equitable defenses in action for legal relief.

26. Contract or tort.

26.1. — In general.

27. — Nature of action.

(1). In general.

(2). Special contractual relation in general.

(3). Carrier and shipper of goods or live stock.

(4). Carrier and passenger.

(5). Agent, broker, banker, trustee, or other fiduciary.

(6). Bailments and pledges.

28. — Waiver of tort.

29. Forms of action at common law.

29.1. — In general.

30. — Distinctions as to form.

31. — Waiver.

32. — Abolition of distinctions.

33. Statutory remedies.

34. — In general.

35. — Cumulative or exclusive remedies.

**13. ACTION****II. NATURE AND FORM.(Cont'd)**

- 36. Change of character or form.
- 37. Error as to character or form.

**III. JOINDER, SPLITTING, CONSOLIDATION, AND SEVERANCE.**

- 38. Single and entire cause of action in general.
  - (1). In general.
  - (2). Different forms of relief.
  - (3). Different kinds of injury from same act.
  - (4). Separate torts or wrongful acts and words of characterization.
  - (5). Separate contracts or instruments.
  - (6). Parties and interests involved.
- 39. Joinder of causes of action at common law.
- 40. — In general.
- 41. — Forms of action.
- 42. — Parties and interests involved.
- 43. Joinder of causes of action under codes and practice acts.
- 43.1. — In general.
- 44. — Forms of action.
- 45. — Nature and grounds of action in general.
  - (1). In general.
  - (2). Actions to recover property.
  - (3). Injuries to person, property, or reputation.
  - (4). Causes of action arising out of contract.
- 46. — Legal and equitable.
- 47. — Contract and tort.
- 48. — Claims arising out of same transaction or transactions connected with same subject of action.
  - (1). In general.
  - (2). Claims arising from wrongful or tortious acts.
  - (3). Claims arising from contract.
- 49. — Complete remedy.
- 50. — Parties and interests involved.
  - (1). In general.
  - (2). Claims or liabilities in different capacities.
  - (3). Joint or common interest of plaintiffs.

**III. JOINDER, SPLITTING, CONSOLIDATION, AND SEVERANCE.(Cont'd)**

- (4). Joint or common liability of defendants.
- (4.1). — In general.
- (5). — Liabilities on contracts.
- (6). — Liabilities for torts.
- (7). — Ownership or possession of property involved.
- (8). — Executor or administrator and heirs or others interested in estate.
- (9). — Corporation or partnership and members, officers, and other interested persons.
- (10). — Actions for equitable relief.
- 52. Joinder of causes of action under civil law.
- 53. Splitting causes of action.
 

*See also JUDGMENT* ¶585(4), 591–599. *Separate trials in same cause, see TRIAL* ¶3.

  - (1). In general.
  - (2). Actions ex delicto.
  - (3). Actions ex contractu.
- 54. Consolidation of actions.
- 55. — In general.
- 56. — Power to consolidate.
- 57. — Actions which may be consolidated.
  - (1). In general.
  - (2). Affected by parties involved.
  - (3). Common questions of law or fact; same transaction or series of transactions.
  - (4). Circumstances precluding consolidation in general; prejudice.
  - (5). Tort actions.
  - (6). Actions in different courts.
  - (7). Pendency and condition of actions.
- 58. — Proceedings for consolidation.
- 59. — Operation and effect.
- 60. Severance of actions.

**IV. COMMENCEMENT, PROSECUTION, AND TERMINATION.**

- 61. Accrual of cause of action.
- 62. Premature commencement.
- 63. Delay in commencing.
- 64. Proceedings constituting commencement.
- 65. Rights and defenses arising after commencement of action.

**15. ADJOINING LANDOWNERS****IV. COMMENCEMENT, PROSECUTION,  
AND TERMINATION.**(Cont'd)

- 66. Course of procedure in general.
- 67. Stay of proceedings.
- 68. — In general.
- 69. — Another action pending.
  - (1). In general.
  - (2). Actions in different jurisdictions in general.
  - (3). Actions in state and federal courts.
  - (4). Identity of parties, subject matter, and relief.
  - (5). Nature and subject matter of actions in general.
  - (6). Injunction and declaratory relief.
  - (7). Actions and administrative proceedings.
- 70. Abandonment.
- 71. Termination.

**14. ACTION ON THE CASE****SUBJECTS INCLUDED**

- Actions of trespass on the case, as distinguished from other forms of action
- Nature and scope of the remedy in general
- Grounds of such actions and defenses thereto
- By and against whom such actions may be maintained
- Proceedings therein

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

- Distinctions between forms of action, see ACTION
- Election between remedies, see ELECTION OF REMEDIES
- Particular classes of liabilities on which actions may be maintained, see NEGLIGENCE, FRAUD, and other specific topics
- 1. Nature and grounds of action.
- 2. Persons entitled to sue.

- 3. Persons liable.
- 4. Pleading.
- 5. Evidence.
- 6. Trial, judgment, and review.

**15. ADJOINING LANDOWNERS****SUBJECTS INCLUDED**

- Mutual rights, duties, and liabilities of proprietors of adjoining lands arising from or incident to the contiguity of their lands
- Ownership of trees, etc., on boundaries
- Lateral support, excavations, embankments, and structures affecting the adjoining land
- Encroachments
- Obstructions of light, air or view

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

- Boundaries, rights and liabilities respecting, see BOUNDARIES
- Easements, see EASEMENTS
- Fences, rights and liabilities respecting, see FENCES
- Mines, rights and liabilities respecting, see MINES AND MINERALS
- Party walls, rights and liabilities respecting, see PARTY WALLS
- Surface and subterranean waters, rights and liabilities respecting, see WATER LAW
- 1. Nature of mutual rights and duties.
- 2. Lateral support.
  - 2.1. — In general.
- 3. — Land in natural state.
- 4. — Buildings and other structures.
  - (1). In general.
  - (2). Right to excavate.
  - (3). Degree of care required and acts constituting negligence.
  - (4). Notice of intention to excavate.
  - (5). Protection of adjoining walls.
  - (6). Persons liable for injuries.
  - (7). Actions for injuries.
- 5. Trees and plants on or near boundary.



**15. ADJOINING LANDOWNERS**

6. Excavations, embankments, and structures affecting adjoining land.
7. Negligence as to premises affecting adjoining land.
8. Use of premises affecting adjoining land.
9. Encroachments.
  - (.5). In general.
  - (1). Nature and extent of liability.
  - (2). Remedies and procedure in general.
  - (3). Damages.
10. Right to and obstruction of light, air, or view.
  - (1). In general.
  - (2). Right to construct windows.
  - (3). Motive in erecting obstruction.

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**15A. ADMINISTRATIVE LAW  
AND PROCEDURE**
**SUBJECTS INCLUDED**

General principles of law governing the status, organization, powers and proceedings of state and federal administrative agencies, officers and agents, especially as affecting private persons and property

Judicial review and enforcement of decisions of such agencies, officers and agents

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Particular administrative agencies, officers and agents, especially with respect to particular subjects—

Corporations, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Federal old age, survivors, and disability benefits, see SOCIAL SECURITY

Interstate commerce, see COMMERCE

Labor relations, see LABOR AND EMPLOYMENT

Licensing, see LICENSES

Securities regulation, see SECURITIES REGULATION

Unfair trade practices, see ANTITRUST AND TRADE REGULATION

Utility regulation, see CARRIERS, PUBLIC UTILITIES, etc.

Workers' compensation, see WORKERS' COMPENSATION

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- I. IN GENERAL, ¶1001–1050.
  - II. ADMINISTRATIVE AGENCIES, ¶1051–1100.
    - (A) IN GENERAL, ¶1051–1060.
    - (B) MEETINGS AND RECORDS, ¶1061–1100.
  - III. ADMINISTRATIVE POWERS AND PROCEEDINGS, ¶1101–1600.
    - (A) IN GENERAL, ¶1101–1140.
    - (B) INVESTIGATIONS, ¶1141–1160.
    - (C) RULES, REGULATIONS, AND OTHER POLICYMAKING, ¶1161–1320.
      1. IN GENERAL, ¶1161–1190.
      2. PROCEDURE FOR ADOPTION, ¶1191–1220.
      3. EXCEPTIONS TO RULEMAKING PROCEDURES, ¶1221–1240.
      4. CONSTRUCTION, ¶1241–1260.
      5. OPERATION AND EFFECT, ¶1261–1280.
      6. AMENDMENT, REPEAL, EXPIRATION, OR CHANGE OF POLICY, ¶1281–1290.
      7. VALIDITY, ¶1291–1300.
      8. DETERMINATION OF VALIDITY, ¶1301–1310.
      9. ENFORCEMENT; EXCUSING NONCOMPLIANCE, ¶1311–1320.
    - (D) ADJUDICATIONS, ¶1321–1600.
      1. IN GENERAL, ¶1321–1330.
      2. PROCEEDINGS IN GENERAL, ¶1331–1370.
      3. WITNESSES, ¶1371–1380.
      4. EVIDENCE, ¶1381–1410.
      5. HEARING, ¶1411–1440.
      6. DECISION, ¶1441–1470.
      7. CHANGE OF POSITION OR COURSE; STARE DECISIS, ¶1471–1480.
      8. COSTS, ¶1481–1490.
      9. ADMINISTRATIVE REVIEW, ¶1491–1600.
  - IV. JUDICIAL REMEDIES AND REVIEW, ¶1601–2100.
    - (A) IN GENERAL, ¶1601–1620.
    - (B) PROCEEDINGS IN GENERAL, ¶1621–1650.
    - (C) REVIEWABILITY, ¶1651–1670.
    - (D) RIGHT OF REVIEW; STANDING; PARTIES, ¶1671–1690.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****IV. JUDICIAL REMEDIES AND REVIEW**  
—Cont'd

- (E) PRESERVATION OF QUESTIONS BEFORE AGENCY, ⚭1691–1700.
  - (F) PROCEEDINGS TO OBTAIN REVIEW, ⚭1701–1720.
  - (G) REVIEW, ⚭1721–1900.
    - 1. IN GENERAL, ⚭1721–1730.
    - 2. PERSONS ENTITLED TO ASSERT ARGUMENTS ON REVIEW, ⚭1731–1740.
    - 3. SCOPE AND EXTENT OF REVIEW IN GENERAL, ⚭1741–1760.
    - 4. PARTICULAR SUBJECTS OF REVIEW IN GENERAL, ⚭1761–1770.
    - 5. REVIEW OF PROCEDURAL MATTERS IN GENERAL, ⚭1771–1800.
    - 6. EVIDENCE AND WITNESSES, ⚭1801–1810.
    - 7. FINDINGS, ⚭1811–1830.
    - 8. SUFFICIENCY OF EVIDENCE, ⚭1831–1840.
    - 9. PARTICULAR ADMINISTRATIVE MATTERS IN GENERAL, ⚭1841–1860.
    - 10. RULES, REGULATIONS, AND OTHER POLICYMAKING; LEGISLATIVE QUESTIONS, ⚭1861–1890.
    - 11. SANCTIONS AND PENALTIES, ⚭1891–1900.
  - (H) PRESUMPTIONS AND BURDENS ON REVIEW, ⚭1901–1930.
    - 1. IN GENERAL, ⚭1901–1910.
    - 2. PARTICULAR MATTERS AND RULINGS, ⚭1911–1920.
    - 3. SILENT OR INADEQUATE RECORD, ⚭1921–1930.
  - (I) THEORY AND GROUNDS OF DECISION ON REVIEW, ⚭1931–1940.
  - (J) WAIVER OF ERROR IN REVIEWING COURT, ⚭1941–1950.
  - (K) TRIAL ON REVIEW, ⚭1951–1960.
  - (L) FURTHER JUDICIAL REVIEW, ⚭1961–1980.
  - (M) HARMLESS AND REVERSIBLE ERROR, ⚭1981–2000.
  - (N) DETERMINATION AND DISPOSITION, ⚭2001–2100.
- V. EXCLUSIVE, CONCURRENT, AND PRIMARY JURISDICTION,**  
⚭2101–2150.

**VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES,** ⚭2151–2200.**VII. ADMINISTRATIVE CONSTRUCTION OF STATUTES,** ⚭2201–2400.

## (A) IN GENERAL, ⚭2201–2220.

## (B) PARTICULAR STATUTES AND CONTEXTS, ⚭2221–2400.

**VIII. ADMINISTRATIVE CONSTRUCTION OF RULES AND REGULATIONS,** ⚭2401–2414.**I. IN GENERAL.**

- 1001. In general.
- 1002. Nature and scope of administrative law.
- 1003. — In general.
- 1004. — Public interest, convenience, or necessity.
- 1005. Constitutional and statutory provisions in general.
- 1006. — In general.
- 1007. — Agencies and proceedings affected.
- 1008. Validity of statutes.
- 1009. — In general.
- 1010. — Administrative agencies.
- 1011. — Separation of administrative and other powers in general.
- 1012. — Delegation of powers.
- 1013. — Powers and proceedings of administrative agencies in general.
- 1014. — Investigations.
- 1015. — Rules and regulations.
- 1016. — Adjudications.
- 1017. — Judicial remedies and review.
- 1018. Repeal of statutes.
- 1019. Retroactivity of statutes.

**II. ADMINISTRATIVE AGENCIES.****(A) IN GENERAL.**

- 1051. In general.
- 1052. Creation of agencies and offices.
- 1053. Status and character.
- 1054. — In general.
- 1055. — Administrative.
- 1056. — Executive.
- 1057. — Legislative.
- 1058. — Judicial in general.
- 1059. — Quasi-judicial.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****(B) MEETINGS AND RECORDS.**

- 1061. In general.
- 1062. Number necessary to act; time of meeting.
- 1063. Voting; determination of will of agency.
- 1064. Open meetings requirement; sunshine laws.
- 1065. — In general.
- 1066. — Purpose of open meetings laws.
- 1067. — Meetings required to be open.
  - (1). In general.
  - (2). Electronic communications or meetings.
- 1068. — Exceptions to open meetings requirement.
  - (1). In general.
  - (2). Executive sessions.
  - (3). Meeting between attorney and agency.
  - (4). Nature of meeting; disclosure of particular matters.
- 1069. — Procedure for closing meeting or portion of meeting.
- 1070. — Notice or announcement of meeting.
- 1071. Effect of violation of open meetings laws in general.
- 1072. Actions to enforce or for violations of open meetings laws.
- 1073. — In general.
- 1074. — Jurisdiction.
- 1075. — Persons entitled to bring action; standing; parties.
- 1076. — Proceedings.
- 1077. — Order or judgment; relief.
- 1078. — Subsequent agency proceedings.
- 1079. Minutes, records, and reports.

**III. ADMINISTRATIVE POWERS AND PROCEEDINGS.****(A) IN GENERAL.**

- 1101. In general.
- 1102. Powers in general.
- 1103. — In general.
- 1104. — Statutory basis and limitation.
- 1105. — Implied powers.
- 1106. — Discretionary powers or acts.
- 1107. — Judicial, legislative, or ministerial powers or acts.

**III. ADMINISTRATIVE POWERS AND PROCEEDINGS.(Cont'd)**

- 1108. — Scope or method of delegation or surrender of powers.
- 1109. — Presumptions.
- 1110. Questions of law in general.
- 1111. Constitutional questions or issues.
- 1112. Allocation of resources; choice of remedies or procedures.
- 1113. Concurrent or conflicting powers.
- 1114. Procedure in general.
- 1115. — In general.
- 1116. — Statutory basis and limitation.
- 1117. — Judicial procedure in general, applicability.
  - (1). In general.
  - (2). Rules of evidence.
- 1118. — Procedural rights in general.
- 1119. — Procedural correctness or compliance in general.
- 1120. — Procedural rules in general.
- 1121. — Motions and orders in general.
- 1122. — Management of actions or matters in general.
- 1123. Bias, prejudice, or other disqualification to exercise powers.
- 1124. — In general.
- 1125. — Necessity of impartiality.
- 1126. — Nature of disqualifying relationship, conduct, or circumstance.
  - (1). In general.
  - (2). Relationship to party, person interested, or counsel.
  - (3). Statements and expressions of opinion of agency or officer.
- 1127. — Recusal or other effect of disqualification.
- 1128. — Objections to agency or officer; proceedings.
- 1129. — Evidence.
- 1130. — Presumptions and burdens of proof.
- 1131. Contracts.
- 1132. Sanctions and penalties in general.
- 1133. Contempt.

**(B) INVESTIGATIONS.**

- 1141. In general.
- 1142. Power and authority of agency.
- 1143. Duty or discretion to investigate.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****III. ADMINISTRATIVE POWERS AND PROCEEDINGS.(Cont'd)**

- 1144. Nature and scope; grounds.
- 1145. Proceedings in general.
- 1146. Hearing; rehearing.
- 1147. Evidence; reception of evidence.
- 1148. Witnesses.
- 1149. — In general.
- 1150. — Subpoena.
  - (1). In general.
  - (2). Subpoena duces tecum.
  - (3). Quashing or modifying subpoena.
  - (4). Failure to comply; sanctions.
- 1151. Findings; record.
- 1152. Report; publication of results.
- 1153. Contempt.
- 1154. Costs.

**(C) RULES, REGULATIONS, AND OTHER POLICYMAKING.****1. IN GENERAL.**

- 1161. In general.
- 1162. Nature, scope, and definitions in general.
- 1163. Rulemaking distinguished from adjudication or other agency action.
- 1164. — In general.
- 1165. — Adjudication.
- 1166. Types of rules, regulations, or other policies.
- 1167. — In general.
- 1168. — Interpretive rules and pronouncements.
- 1169. — Legislative rules; substantive rules.
- 1170. — Procedural rules.
- 1171. — Policy statements; ad hoc rules.
- 1172. Matters subject to rules or rulemaking in general.
- 1173. Power and authority to make.
- 1174. — In general.
- 1175. — Statutory basis.
- 1176. — Statutory limitation.
- 1177. Duty to make; policymaking mechanisms.
- 1178. — In general.
- 1179. — Agency discretion in general.
- 1180. — Formal or informal policymaking in general.

**III. ADMINISTRATIVE POWERS AND PROCEEDINGS.(Cont'd)**

- 1181. — Rulemaking, adjudication, or other mechanism.

**2. PROCEDURE FOR ADOPTION.**

- 1191. In general.
- 1192. Notice and comment in general.
- 1193. Requirements of notice and comment in general.
- 1194. Notice.
- 1195. — In general.
- 1196. — Publication.
- 1197. — Contents and sufficiency.
- 1198. — Rule differing from published notice.
- 1199. Comment and hearing.
- 1200. — In general.
- 1201. — Opportunity for comment.
- 1202. — Response to comment.
- 1203. — Time for comment or response.
- 1204. — Hearing.
- 1205. Evaluation; agency expertise and knowledge.
- 1206. Findings; reason or explanation.
- 1207. Adoption.
- 1208. — In general.
- 1209. — Statement of basis and purpose.
- 1210. — Statement of economic or social impact.
- 1211. Publication or notice of adopted rule.
- 1212. — In general.
- 1213. — Necessity.
- 1214. — Sufficiency.
- 1215. Filing.
- 1216. Record.
- 1217. Emergency or temporary rules.

**3. EXCEPTIONS TO RULEMAKING PROCEDURES.**

- 1221. In general.
- 1222. Good cause in general.
- 1223. — In general.
- 1224. — Impracticable or unnecessary; time constraints.
- 1225. — Public interest; harm.
- 1226. Particular types of rules, regulations, policies, or statements.
- 1227. — In general.
- 1228. — Legislative rules; substantive rules.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****III. ADMINISTRATIVE POWERS AND PROCEEDINGS.(Cont'd)**

- 1229. — Interpretive rules and pronouncements.
- 1230. — Rules of agency organization, procedure, or practice.
- 1231. — Policy statements; other informal pronouncements.
- 1232. Evidence; questions of law or fact.

**4. CONSTRUCTION.**

- 1241. In general.
- 1242. Plain language; plain, ordinary, or common meaning.
- 1243. Clarity and ambiguity; multiple meanings.
- 1244. Particular elements of language.
- 1245. Rule or regulation as a whole; relation of parts to whole and one another.
- 1246. Extrinsic aids to construction.
- 1247. Other law, construction with reference to.
- 1248. Administrative or legislative history.
- 1249. Determination of construction.
- 1250. — In general.
- 1251. — Questions of law or fact.
- 1252. — Presumptions and burden of proof.

**5. OPERATION AND EFFECT.**

- 1261. In general.
- 1262. Force of law in general.
- 1263. Legislative rules; substantive rules.
- 1264. Proposed rules.
- 1265. Interpretive rules and pronouncements.
- 1266. Rules of agency organization, procedure, or practice.
- 1267. Policy statements; other informal pronouncements.
- 1268. Effect on agency.
- 1269. Conflicting rules, regulations, or other policies.
- 1270. Effective date; prospective or retroactive effect.
- 1271. — In general.
- 1272. — Prospective or retroactive effect.
- 1273. Delays, stays, or suspensions.
- 1274. Evidence; questions of law or fact.

**6. AMENDMENT, REPEAL, EXPIRATION, OR CHANGE OF POLICY.**

- 1281. In general.
- 1282. Power and authority of agency.
- 1283. Requirements in general.
- 1284. — In general.
- 1285. — Procedure; notice and comment.
- 1286. Amendment by adjudication.
- 1287. Change of policy; reason or explanation.
- 1288. Construction; operation and effect.

**7. VALIDITY.**

- 1291. In general.
- 1292. Effect of agency's authority or lack thereof.
- 1293. Arbitrariness and capriciousness; reasonableness.
- 1294. Compliance with constitution or law in general.
- 1295. Consistency with statute, statutory scheme, or legislative intent.
- 1296. Compliance with rulemaking procedures or other process.
- 1297. Wisdom or suitability; alternatives.

**8. DETERMINATION OF VALIDITY.**

- 1301. In general.
- 1302. Facial invalidity.
- 1303. Invalidity as applied.
- 1304. Presumptions and burden of proof.
- 1305. Effect of invalidity or invalidation.
- 1306. — In general.
- 1307. — Partial invalidity; severability.

**9. ENFORCEMENT; EXCUSING NONCOMPLIANCE.**

- 1311. In general.
- 1312. Power and duty of agency; discretion.
- 1313. Actions to enforce or for selective enforcement.
- 1314. — In general.
- 1315. — Persons entitled to bring action; standing; parties.
- 1316. — Proceedings.
- 1317. — Order or judgment; relief.

**(D) ADJUDICATIONS.****1. IN GENERAL.**

- 1321. In general.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****III. ADMINISTRATIVE POWERS AND PROCEEDINGS.(Cont'd)**

- 1322. Power and authority of agency; discretion.
- 1323. Presiding officers.
- 1324. Separation of function of officers.
- 1325. Nature and purpose.
- 1326. — In general.
- 1327. — Formal or informal proceedings.
- 1328. — Contested or noncontested case.
- 1329. — Adjudications.

**2. PROCEEDINGS IN GENERAL.**

- 1331. In general.
- 1332. Procedural rights and essentials in general.
- 1333. Time for proceedings; limitation and laches.
- 1334. Calendar and docket.
- 1335. Consolidation of proceedings.
- 1336. Jurisdiction.
- 1337. — In general.
- 1338. — Personal jurisdiction.
- 1339. — Subject matter jurisdiction.
- 1340. — Mootness; ripeness.
- 1341. Right to seek adjudication or hearing; standing; parties.
- 1342. — In general.
- 1343. — Interest in general.
- 1344. — Persons affected or aggrieved; injury.
- 1345. — Intervention, substitution, or addition of parties.
- 1346. Process and notice.
- 1347. — In general.
- 1348. — Necessity.
- 1349. — Sufficiency.
- 1350. — Defects, objections, and amendment.
- 1351. Appearance and participation in general.
- 1352. Pleadings.
- 1353. — In general.
- 1354. — Variance between allegations and proof.
- 1355. — Amendment; defects and objections.
- 1356. Discovery and disclosure in general.
- 1357. — In general.
- 1358. — Failure to disclose; sanctions.

**III. ADMINISTRATIVE POWERS AND PROCEEDINGS.(Cont'd)**

- 1359. Briefs; oral argument.
- 1360. Record.
- 1361. Dismissal.

**3. WITNESSES.**

- 1371. In general.
- 1372. Subpoena.
- 1373. — In general.
- 1374. — Subpoena duces tecum.
- 1375. — Quashing or modifying subpoena.
- 1376. — Failure to comply; sanctions.

**4. EVIDENCE.**

- 1381. In general.
- 1382. Matters of record; matters of common or expert knowledge.
- 1383. Presumptions and burden of proof.
- 1384. Admissibility.
- 1385. — In general.
- 1386. — Declarations, admissions, and statements in general.
- 1387. — Hearsay.
- 1388. — Documentary evidence.
- 1389. — Opinion evidence in general.
- 1390. — Expert, scientific, or technical evidence.
- 1391. Weight and sufficiency.
- 1392. — In general.
- 1393. — Latitude and discretion of agency in general.
- 1394. — Credibility.
- 1395. — Hearsay.
- 1396. — Opinion evidence in general.
- 1397. — Expert, scientific, or technical evidence.
- 1398. Degree of proof.
- 1399. — In general.
- 1400. — Substantial evidence.

**5. HEARING.**

- 1411. In general.
- 1412. Nature and purpose.
- 1413. Necessity; right to hearing.
- 1414. Elements and essentials in general.
- 1415. Right to counsel; representation.
- 1416. Presence of parties and counsel.
- 1417. Course and conduct.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****III. ADMINISTRATIVE POWERS AND PROCEEDINGS.(Cont'd)**

- 1418. By single member of administrative body.
- 1419. By referee, examiner, or other subordinate.
- 1420. Time for hearing.
- 1421. Continuance.
- 1422. Reception of evidence.
- 1423. Findings and conclusions.
- 1424. — In general; purpose.
- 1425. — Necessity.
- 1426. — Sufficiency.
- 1427. — Modification or correction.
- 1428. Rehearing; reconsideration.
- 1429. — In general; purpose.
- 1430. — Power and authority of agency; discretion.
- 1431. — Necessity; grounds.
- 1432. — Proceedings to obtain.

**6. DECISION.**

- 1441. In general.
- 1442. Nature, requisites, and validity in general.
- 1443. — In general.
- 1444. — Conformity with pleadings, evidence, and findings.
- 1445. Construction, operation, and effect in general.
- 1446. Amendment or correction.
- 1447. Time of taking effect; retroactivity.
- 1448. Modification.
- 1449. Vacatur.
- 1450. Relief granted; remedies.
- 1451. Declaratory or advisory orders.
- 1452. Presumption of validity of decision.
- 1453. Report or opinion; reasons for decision.
- 1454. Publication, service, or notice of decision.
- 1455. Conclusiveness.
- 1456. — In general.
- 1457. — Res judicata or claim preclusion.
- 1458. — Collateral estoppel or issue preclusion.
- 1459. — Collateral attack.
- 1460. — Law of the case.

**7. CHANGE OF POSITION OR COURSE; STARE DECISIS.**

- 1471. In general.
- 1472. Stare decisis; effect of prior decisions.
- 1473. Grounds for change.
- 1474. Explanation or reasons for change.

**8. COSTS.**

- 1481. In general.
- 1482. Attorney fees.

**9. ADMINISTRATIVE REVIEW.**

- 1491. In general.
- 1492. Considerations preliminary to conducting administrative review.
- 1493. Decisions subject to administrative review.
- 1494. Persons entitled to seek administrative review.
- 1495. Proceedings to obtain administrative review.
- 1496. — In general.
- 1497. — Time for administrative review.
- 1498. Preservation of issues for administrative review.
- 1499. Proceedings on administrative review.
- 1500. Scope and standards of administrative review in general.
- 1501. — In general.
- 1502. — Presumptions and burden of proof.
- 1503. — Questions of law.
- 1504. — Questions of fact; findings.
- 1505. — Discretion of agency.
- 1506. Harmless and reversible error.
- 1507. Determination and disposition.

**IV. JUDICIAL REMEDIES AND REVIEW.****(A) IN GENERAL.**

- 1601. In general.
- 1602. Judicial enforcement of administrative decisions in general.
- 1603. Purpose or necessity of review.
- 1604. Judicial role or function in general.
- 1605. Legislative power and authority in general.
- 1606. Nature and form of remedy.
- 1607. — In general.
- 1608. — Appeal.
- 1609. — Special statutory proceeding.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****(B) PROCEEDINGS IN GENERAL.**

- 1621. In general.
- 1622. Jurisdiction.
- 1623. Venue.
- 1624. Discovery and disclosure in general.
- 1625. Record.
- 1626. — In general; necessity.
- 1627. — Scope and contents; matters to be shown.
- 1628. — Defects or objections; amendment or correction.
- 1629. — Review limited to administrative record in general.
- 1630. — Consideration of new or additional evidence.
- 1631. — Supplementation.
  - (1). In general.
  - (2). Grounds, factors, and considerations.
- 1632. — Proceedings on record.
  - (1). In general.
  - (2). Discovery and disclosure.
  - (3). Evidence.
  - (4). — In general.
  - (5). — Presumptions and burden of proof.
  - (6). — Degree of proof; weight and sufficiency.
  - (7). Motion to amend, correct, or supplement; hearing and determination.
  - (8). Order and effect of amendment, correction, or supplementation.
- 1633. Briefs and assignments of error.
- 1634. — In general; necessity.
- 1635. — Requisites and sufficiency.
- 1636. — Failure to file or serve; untimeliness.
- 1637. Dismissal, withdrawal, or abandonment.
- 1638. — In general.
- 1639. — Grounds for dismissal in general.
- 1640. — Motion for dismissal; hearing and determination.
- 1641. — Order and effect of dismissal.
- 1642. Hearing; rehearing.
- 1643. Costs.
- 1644. — In general.
- 1645. — Attorney fees.

**(C) REVIEWABILITY.**

- 1651. In general.
  - 1652. Legislative power and authority in general.
  - 1653. Non-statutory review.
  - 1654. Presumptions as to reviewability.
  - 1655. — In general.
  - 1656. — Rebuttal of presumptions.
  - 1657. Requirements for reviewability in general.
  - 1658. — In general.
  - 1659. — Statutory provision for review.
  - 1660. — Absence of other remedy.
  - 1661. — Agency action.
    - (1). In general.
    - (2). Finality in general.
    - (3). — In general.
    - (4). — What constitutes finality in general.
    - (5). Preliminary, procedural, or intermediate actions.
    - (6). Exceptions to finality requirement.
    - (7). Particular agency actions.
    - (8). — In general.
    - (9). — Investigations.
    - (10). — Rules, regulations, and other policymaking.
    - (11). — Adjudications.
  - 1662. Nature, scope, or effect of agency action.
  - 1663. — In general.
  - 1664. — Actions committed to agency discretion in general.
    - (1). In general.
    - (2). Meaningful standard for review.
    - (3). Exceptions to review preclusion.
  - 1665. — Failures to act in general.
    - (1). In general.
    - (2). Delay in taking action.
  - 1666. — Particular agency actions or failures to act.
    - (1). In general.
    - (2). Investigations.
    - (3). Rules, regulations, and other policymaking.
    - (4). Adjudications.
- (D) RIGHT OF REVIEW; STANDING; PARTIES.**
- 1671. In general.
  - 1672. Standing in general.



**15A. ADMINISTRATIVE LAW AND PROCEDURE****IV. JUDICIAL REMEDIES AND  
REVIEW.(Cont'd)**

- 1673. Prudential standing in general.
- 1674. Interest in general.
- 1675. Persons affected or aggrieved; injury.
- 1676. — In general.
- 1677. — Injury in general.
- 1678. — Causation; redressability.
- 1679. Persons who may challenge rules, regulations, or other policies.
- 1680. Intervention, substitution, or addition of new parties on review.
- 1681. Proceedings.

**(E) PRESERVATION OF QUESTIONS  
BEFORE AGENCY.**

- 1691. In general; necessity.
- 1692. Mode and sufficiency of presentation.
- 1693. Particular questions for review.

**(F) PROCEEDINGS TO OBTAIN REVIEW.**

- 1701. In general.
- 1702. Time for initiating proceedings or filing initial document.
- 1703. — In general.
- 1704. — Nature and operation of limitations in general.
- 1705. — Commencement and running of time in general.
- 1706. — Alteration of time; excuses for delay.
- 1707. — Effect of delay.
- 1708. Process in general.
- 1709. Petition, application, notice of appeal, or pleading.
- 1710. — In general; necessity.
- 1711. — Requisites and sufficiency.
- 1712. — Filing, service, and return.
- 1713. — Amendment; defects and waiver.
- 1714. Effect of obtaining review or proceedings to obtain review.
- 1715. — In general.
- 1716. — Supersedeas or stay of proceedings.
- 1717. Evidence.

**(G) REVIEW.****1. IN GENERAL.**

- 1721. In general.

**IV. JUDICIAL REMEDIES AND  
REVIEW.(Cont'd)**

- 1722. Considerations preliminary to conducting review.
- 1723. — In general.
- 1724. — Necessity of determination by reviewing court.
  - (1). In general.
  - (2). Mootness.
  - (3). Ripeness; prematurity.

**2. PERSONS ENTITLED TO ASSERT  
ARGUMENTS ON REVIEW.**

- 1731. In general.
- 1732. Estoppel and waiver; invited error.

**3. SCOPE AND EXTENT OF REVIEW IN GENERAL.**

- 1741. In general.
- 1742. Standard of review in general.
- 1743. Review for arbitrary, capricious, unreasonable, or illegal actions in general.
- 1744. Questions of law or fact in general.
- 1745. Deference given to agency in general.
- 1746. De novo review; plenary, free, or independent review.
- 1747. Discretion of agency; abuse of discretion.
- 1748. Review for correctness or error.
- 1749. Wisdom, judgment, or opinion in general.
- 1750. Agency expertise in general.
- 1751. Scientific and technical matters.

**4. PARTICULAR SUBJECTS OF  
REVIEW IN GENERAL.**

- 1761. In general.
- 1762. Conclusions of law in general.
- 1763. Construction, interpretation, or application of law in general.
- 1764. Application of law to or in light of facts.
- 1765. Mixed questions of law and facts.
- 1766. Agreed or undisputed facts.
- 1767. Conclusiveness and effect of prior decisions.

**5. REVIEW OF PROCEDURAL  
MATTERS IN GENERAL.**

- 1771. In general.
- 1772. Procedural rights in general.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****IV. JUDICIAL REMEDIES AND  
REVIEW.(Cont'd)**

- 1773. Procedural correctness or compliance in general.
- 1774. Procedural fairness or impartiality in general.
- 1775. Procedural rules in general.
- 1776. Motions and orders in general.
- 1777. Management of actions or matters in general.
- 1778. Jurisdiction.
- 1779. Parties; standing.
- 1780. Process; notice in general.
- 1781. Pleading.
- 1782. Time for proceedings; limitations.
- 1783. Estoppel and waiver.
- 1784. Stipulations.
- 1785. Continuance and stay.
- 1786. Presiding or hearing officers.
- 1787. — In general.
- 1788. — Bias, recusal, and disqualification.
- 1789. Compromise and settlement.
- 1790. Discovery and disclosure.
- 1791. — In general.
- 1792. — Failure to disclose; sanctions.
- 1793. Subpoena.
- 1794. — In general.
- 1795. — Quashing or modifying.
- 1796. — Failure to comply; sanctions.
- 1797. Hearings.
- 1798. Post-hearing proceedings in general.
- 1799. Costs and fees.

**6. EVIDENCE AND WITNESSES.**

- 1801. In general.
- 1802. Witnesses in general.
- 1803. Opinion evidence in general.
- 1804. Expert, technical, or scientific evidence and witnesses.

**7. FINDINGS.**

- 1811. In general.
- 1812. Review for arbitrariness or capriciousness.
- 1813. Conclusiveness and effect in general.
- 1814. Province of, and deference to, agency in general.
- 1815. De novo review; plenary, free, or independent review.

**IV. JUDICIAL REMEDIES AND  
REVIEW.(Cont'd)**

- 1816. Discretion of agency; abuse of discretion.
- 1817. Substitution of reviewing court's discretion or judgment.
- 1818. Reasonableness; rational basis.
- 1819. Review for correctness or error in general.
- 1820. Clear error; "clearly erroneous" standard.

**8. SUFFICIENCY OF EVIDENCE.**

- 1831. In general.
- 1832. Character and amount of evidence in general.
- 1833. Competent or credible evidence in general.
- 1834. Credibility and number of witnesses.
- 1835. Inferences and conclusions drawn from evidence.
- 1836. Substantial evidence.
- 1837. Weight of evidence.
- 1838. Conflicting or disputed evidence.
- 1839. Expert, technical, or scientific evidence.

**9. PARTICULAR ADMINISTRATIVE  
MATTERS IN GENERAL.**

- 1841. In general.
- 1842. Power and authority of agency in general; officials, officers, and agents.
- 1843. Agency considerations in general.
- 1844. — In general.
- 1845. — Allocation of resources; choice of proceedings or remedies.
- 1846. Investigations.
- 1847. — In general.
- 1848. — Power and duty of agency.
- 1849. — Proceedings in general.
- 1850. — Discovery.
- 1851. — Evidence; witnesses.
- 1852. — Hearings.
- 1853. — Results and reports.
- 1854. Enforcement in general.

**10. RULES, REGULATIONS, AND OTHER  
POLICYMAKING; LEGISLATIVE  
QUESTIONS.**

- 1861. In general.
- 1862. Power and authority of agency in general; duty.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****IV. JUDICIAL REMEDIES AND  
REVIEW.(Cont'd)**

- 1863. Agency considerations in general.
- 1864. — In general.
- 1865. — Allocation of resources; choice of proceedings or remedies.
- 1866. Rulemaking and procedure.
- 1867. — In general.
- 1868. — Procedural rights and requirements in general.
- 1869. — Procedure for adoption.
  - (1). In general.
  - (2). Notice and comment; response.
- 1870. — Exception to rulemaking procedures.
- 1871. — Amendment, repeal, expiration, or change of policy.
- 1872. — Enforcement.
- 1873. Scope and extent of review of regulations, rules, and other policies.
- 1874. — In general.
- 1875. — Material considered or required on review.
- 1876. — Review for arbitrariness, capriciousness, unreasonableness, or illegality.
- 1877. — Deference to agency in general.
- 1878. — De novo review; plenary, free, or independent review.
- 1879. — Discretion of agency; abuse of discretion.
- 1880. — Review for correctness or error.
- 1881. — Questions of fact and findings; evidence.
- 1882. — Wisdom, judgment, or opinion in general.
- 1883. — Agency expertise; scientific and technical matters.

**11. SANCTIONS AND PENALTIES.**

- 1891. In general.
- 1892. Review for arbitrariness, capriciousness, unreasonableness, or illegality.
- 1893. Deference to agency in general.
- 1894. De novo review; plenary, free, or independent review.
- 1895. Discretion of agency; abuse of discretion.
- 1896. Review for correctness or error.

**IV. JUDICIAL REMEDIES AND  
REVIEW.(Cont'd)**

- 1897. Questions of fact and findings; evidence.
- 1898. Wisdom, judgment, or opinion in general.
- 1899. Agency expertise; scientific and technical matters.

**(H) PRESUMPTIONS AND BURDENS ON REVIEW.****1. IN GENERAL.**

- 1901. In general.
- 1902. Correctness or error.
- 1903. Discretion of agency; abuse of discretion.
- 1904. Matters of law.
- 1905. Matters of fact.
- 1906. Application of law to facts.
- 1907. Mixed questions of law and fact.

**2. PARTICULAR MATTERS AND RULINGS.**

- 1911. In general.
- 1912. Procedural matters in general.
- 1913. Evidence and witnesses in general.
- 1914. Findings in general.
- 1915. Sufficiency of evidence.
- 1916. Rules, regulations, and other policy-making.
- 1917. Sanctions and penalties.

**3. SILENT OR INADEQUATE RECORD.**

- 1921. In general.
- 1922. Completeness; partial or incomplete record.
- 1923. Ambiguities in record.
- 1924. Particular matters and rulings.

**(I) THEORY AND GROUNDS OF  
DECISION ON REVIEW.**

- 1931. In general.
- 1932. Theory or grounds not provided or relied upon by agency.
- 1933. Sufficiency of theory or grounds provided by agency.
- 1934. Correct decision based on incorrect or insufficient theory or grounds.
- 1935. Timing of theory and grounds asserted.
- 1936. Matters into which reviewing court may inquire.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****(J) WAIVER OF ERROR IN REVIEWING COURT.**

- 1941. In general.
- 1942. Adequacy of assertion of error.
- 1943. — In general.
- 1944. — Briefs and arguments in general.
- 1945. — Citation to facts and legal authority in general.

**(K) TRIAL ON REVIEW.**

- 1951. In general.
- 1952. Proceedings in general.
- 1953. Evidence.

**(L) FURTHER JUDICIAL REVIEW.**

- 1961. In general.
- 1962. Decisions reviewable.
- 1963. Right of review, parties, and estoppel.
- 1964. Preservation of grounds for review.
- 1965. Perfection; briefs and assignments.
- 1966. Record.
- 1967. Dismissal; mootness and ripeness.
- 1968. Scope and standards of further review.
- 1969. — In general.
- 1970. — Decision reviewed.
- 1971. — Review using standard applied below.
- 1972. — Questions of law or fact; matters of law.
- 1973. — Trial or review de novo.
- 1974. — Discretion of lower court.
- 1975. — Findings; evidence.
- 1976. Presumptions and burdens on further review.
- 1977. Determination and disposition.
- 1978. Subsequent appeal or review.
- 1979. Costs.

**(M) HARMLESS AND REVERSIBLE ERROR.**

- 1981. In general.
- 1982. Substantiality; substantial error.
- 1983. Materiality; material error.
- 1984. Prejudice; prejudicial error.
- 1985. Relation between error and final outcome or result.
- 1986. Technical or formal error.
- 1987. Structural, fundamental, or constitutional error.
- 1988. Particular errors.
- 1989. — In general.

**IV. JUDICIAL REMEDIES AND REVIEW.(Cont'd)**

- 1990. — Procedural matters in general.
- 1991. — Evidence and witnesses in general.
- 1992. — Findings in general.
- 1993. — Sufficiency of evidence.
- 1994. — Rules, regulations, and other policymaking.
- 1995. — Sanctions and penalties.
- 1996. Presumptions and burdens as to harmless and reversible error.

**(N) DETERMINATION AND DISPOSITION.**

- 2001. In general.
- 2002. Summary judgment or disposition.
- 2003. — In general.
- 2004. — Availability and suitability; summary judgment as mechanism on review.
- 2005. — Standards and grounds for summary judgment or disposition; evidence.
- 2006. Power and authority of reviewing court in general.
- 2007. Findings and conclusions by reviewing court in general.
- 2008. Compelling agency action.
- 2009. — In general.
- 2010. — Discreteness of action.
- 2011. — Unlawfully withheld or unreasonably delayed action.
- 2012. Affirmance.
- 2013. Modification.
- 2014. Annulment, vacatur, or setting aside of administrative decision.
- 2015. — In general.
- 2016. — Rules and regulations.
- 2017. Reversal.
- 2018. Remand.
- 2019. — In general.
- 2020. — Particular errors and defects warranting remand.
  - (1). In general.
  - (2). Procedural matters in general.
  - (3). Evidence and witnesses in general.
  - (4). Findings in general.
  - (5). Sufficiency of evidence.
  - (6). Rules, regulations, and other policymaking.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****IV. JUDICIAL REMEDIES AND REVIEW.(Cont'd)**

- (7). Sanctions and penalties.
- (8). Record.
- 2021. Directions on remand.
- 2022. — In general.
- 2023. — Development of record or evidence in general.
- 2024. — Making or supplementing findings and conclusions.
- 2025. — Making or supplementing reasons for decision.
- 2026. — Conducting proceedings or further proceedings.
  - (1). In general.
  - (2). Particular proceedings.
- 2027. Further administrative proceedings.
- 2028. — In general.
- 2029. — Effect of decision of reviewing court.
- 2030. — Decision of reviewing court as law of the case.
- 2031. — Course and conduct of further administrative proceedings.
- 2032. — Failure to obey mandate or follow decision of reviewing court.
- 2033. Further judicial review; subsequent review.

**V. EXCLUSIVE, CONCURRENT, AND PRIMARY JURISDICTION.**

- 2101. In general.
- 2102. Exclusive or original jurisdiction.
- 2103. Concurrent jurisdiction.
- 2104. Primary jurisdiction.
- 2105. — In general.
- 2106. — Nature and purpose.
- 2107. — Exceptions.
- 2108. Determination of jurisdiction.
- 2109. — In general.
- 2110. — Presumptions and burden of proof.
- 2111. — Questions of law or fact.
- 2112. Estoppel and waiver.

**VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES.**

- 2151. In general.
- 2152. Nature and purpose.
- 2153. Requirements for exhaustion.

**VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES.(Cont'd)**

- 2154. Exceptions.
- 2155. — In general.
- 2156. — Opportunity for adequate relief.
- 2157. — Futility.
- 2158. — Harm or injury.
- 2159. — Constitutional or legal questions.
- 2160. Determination of exhaustion.
- 2161. — In general.
- 2162. — Presumptions and burden of proof.
- 2163. — Questions of law or fact.
- 2164. Estoppel and waiver.

**VII. ADMINISTRATIVE CONSTRUCTION OF STATUTES.****(A) IN GENERAL.**

- 2201. In general.
- 2202. Power and authority of agency in general.
- 2203. Review in general.
- 2204. Deference to agency in general.
- 2205. — In general.
- 2206. — Relationship of agency with statute in general.
- 2207. — Competence, expertise, and knowledge of agency.
- 2208. — Circumstances or time of construction.
  - (1). In general.
  - (2). Contemporaneous or subsequent construction in general.
  - (3). Consistent or longstanding construction.
  - (4). Construction for particular purpose.
- 2209. — Construction without force of law; informal construction.
- 2210. Plain, literal, or clear meaning; ambiguity or silence.
- 2211. Permissible or reasonable construction.
- 2212. Erroneous or unreasonable construction; conflict with statute.
- 2213. Legislative acquiescence, approval, or other response in general.
- 2214. Reenactment of construed statute; incorporation of construction.
- 2215. Particular agencies, officers, and agents, construction by.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****(B) PARTICULAR STATUTES AND CONTEXTS.**

- 2221. In general.
- 2222. Courts, litigation, and dispute resolution in general.
- 2223. Contracts, torts, and property in general.
- 2224. Civil rights and discrimination in general.
- 2225. Government and political subdivisions.
- 2226. — In general.
- 2227. — Public property and facilities.
- 2228. — Public contracts.
- 2229. Public records.
- 2230. Public assistance.
- 2231. — In general.
- 2232. — Social Security.
  - (1). In general.
  - (2). Supplemental security income; disability benefits.
- 2233. — Medical assistance in general; Medicaid.
- 2234. — Federal medical assistance to the elderly; Medicare.
- 2235. — Unemployment compensation.
- 2236. Housing.
- 2237. — In general.
- 2238. — Public housing.
- 2239. — Housing assistance.
- 2240. — Housing discrimination.
- 2241. Taxation.
- 2242. — In general.
- 2243. — Property taxes.
- 2244. — Income taxes.
- 2245. — Sales and use taxes.
- 2246. Customs duties.
- 2247. — In general.
- 2248. — Import and export duties; tariffs.
- 2249. — Antidumping and countervailing duties.
- 2250. Labor, employment, and public officials.
- 2251. — In general.
- 2252. — Adverse employment action.
- 2253. — Compensation; wages and hours.
- 2254. — Pension and benefits.
- 2255. — Public employment.
  - (1). In general.
  - (2). Adverse employment action.
  - (3). Compensation; wages and hours.

**VII. ADMINISTRATIVE CONSTRUCTION OF STATUTES.(Cont'd)**

- (4). Pension and benefits.
- 2256. — Employment discrimination.
- 2257. — Labor relations.
- 2258. — Safety and health.
- 2259. — Workers' compensation.
- 2260. Education.
- 2261. Elections, voting, and political rights.
- 2262. War, national security, and armed services.
- 2263. — In general.
- 2264. — Veterans' benefits.
- 2265. Commerce, trade, and business.
- 2266. — In general.
- 2267. — Unfair trade practices and consumer protection.
- 2268. — Antitrust and monopolies.
- 2269. — Finance, banking, and credit.
- 2270. — Securities regulation.
- 2271. — Insurance.
- 2272. — Intellectual property.
- 2273. — Carriers.
- 2274. — Public utilities.
- 2275. — Telecommunications.
- 2276. Shipping and maritime matters.
- 2277. Mines and minerals.
- 2278. Roads, highways, and motor vehicles.
- 2279. Health.
- 2280. — In general.
- 2281. — Health care facilities and professionals.
- 2282. — Medical products and devices; drugs and vaccines.
- 2283. Mental health.
- 2284. — In general.
- 2285. — Sex offenders.
- 2286. Environment and natural resources.
- 2287. — In general.
- 2288. — Waters, wetlands, and water pollution.
- 2289. — Air pollution.
- 2290. — Hazardous waste and materials.
- 2291. Animals, plants, and wildlife.
- 2292. — In general.
- 2293. — Woods and forests; wilderness management.
- 2294. — Agriculture.

**15A. ADMINISTRATIVE LAW AND PROCEDURE****VII. ADMINISTRATIVE CONSTRUCTION  
OF STATUTES.(Cont'd)**

- 2295. — Fish and game; hunting and fishing.
- 2296. — Endangered species.
- 2297. Families and children.
- 2298. Aliens, immigration, and citizenship.
- 2299. — In general.
- 2300. — Denial of admission; removal.
- 2301. — Asylum, refugees, and withholding of removal.
- 2302. Indians and Indian lands.
- 2303. Alcoholic beverages and intoxicating liquors.
- 2304. Gaming and lotteries.
- 2305. Creditors' remedies; bankruptcy.
- 2306. Zoning and land use.
- 2307. Criminal justice.
- 2308. — In general.
- 2309. — Sentencing and punishment.
- 2310. — Prisons and prisoners; pretrial detention.
- 2311. — Pardon and parole.
- 2312. Weapons.

**VIII. ADMINISTRATIVE CONSTRUCTION  
OF RULES AND REGULATIONS.**

- 2401. In general.
- 2402. Power and authority of agency in general.
- 2403. Review in general.
- 2404. Deference to agency in general.
- 2405. — In general.
- 2406. — Relationship of agency with rule or statute in general.
- 2407. — Competence, expertise, and knowledge of agency.
- 2408. — Circumstances or time of construction.
  - (1). In general.
  - (2). Contemporaneous or subsequent construction in general.
  - (3). Consistent or longstanding construction.
  - (4). Construction for particular purpose.
- 2409. — Policy statements, opinion letters, and similar materials.
- 2410. Plain, literal, or clear meaning; ambiguity or silence.

**VIII. ADMINISTRATIVE CONSTRUCTION OF  
RULES AND REGULATIONS.(Cont'd)**

- 2411. Permissible or reasonable construction.
- 2412. Erroneous or unreasonable construction; conflict with rule or statute.
- 2413. Legislative acquiescence, approval, or other response in general.
- 2414. Particular agencies, officers, and agents, construction by.

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**16. ADMIRALTY****SUBJECTS INCLUDED**

Administration of the maritime law, general or local, as a distinct system of jurisprudence, by courts of admiralty

Nature, grounds, limits, and subjects of jurisdiction of admiralty in general

Procedure peculiar to suits in admiralty

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Organization and general conduct of business of courts of admiralty see **FEDERAL COURTS**

Particular subjects of admiralty jurisdiction, see **SHIPPING, SEAMEN, PILOTS, TOWAGE, WHARVES, INSURANCE, WATER LAW, COLLISION, MARITIME LIENS, SALVAGE, and CRIMINAL LAW**

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- I. JURISDICTION, ¶1–25.
  - II. REMEDIES AND PROCEDURE IN GENERAL, ¶26–39.
  - III. PARTIES, PROCESS, CLAIMS, AND STIPULATIONS OR OTHER SECURITY, ¶40–58.
  - IV. PLEADING, ¶59–71.
  - V. MOTIONS, ¶72.
  - VI. EVIDENCE, AND TAKING AND FILING PROOFS, ¶73–77.
  - VII. PRELIMINARY PROCEEDINGS, ¶78.
  - VIII. HEARING OR TRIAL, ¶79–81.
  - IX. REHEARING OR NEW TRIAL, ¶82.
  - X. COMMISSIONERS AND PROCEEDINGS BEFORE THEM, ¶83–87.

**16. ADMIRALTY****XI. DECREE AND ENFORCEMENT**

THEREOF, ⚭88–101.

**XII. APPEAL**, ⚭102–120.**XIII. COSTS**, ⚭121–127.**I. JURISDICTION.**

1. Nature, grounds, and scope in general.
  - (.5). In general.
  - (1). Jurisdiction in general.
  - (2). Equitable jurisdiction; injunctions.
  - (3). Ancillary and incidental jurisdiction and jurisdiction of entire controversy.
- 1.5. Nature and source of maritime law.
- 1.6. Effect of United States Constitution; powers of Congress.
- 1.10. What law governs.
- 1.11. — In general.
- 1.15. — Torts.
- 1.20. — Effect of state laws.
  - (1). In general.
  - (2). Contracts in general; insurance.
  - (3). Licenses and taxes.
  - (4). Remedies and procedure.
  - (5). Torts in general; workers' compensation.
  - (6). Wrongful death.
2. Saving of common-law remedy.
4. Waters, places, and voyages.
5. Persons.
  - (1). In general.
  - (2). Forum non conveniens in general.
  - (3). Suits between foreigners in general.
  - (4). Foreign seamen, suits respecting.
    - (4.1). — In general.
  - (5). — Wage controversies.
  - (6). — Injuries, maintenance, and cure.
  - (7). Stipulation to sue in foreign court.
6. Vessels and other property.
7. Rights and controversies in general.
8. Ownership and possession of vessels.
9. Contracts.
  - 9.1. — In general.
10. — Maritime contracts in general.
  - (.5). In general.
    - (1). Jurisdiction in general.
    - (2). Nature of contract in general.

**I. JURISDICTION.**(Cont'd)

- (3). Indemnity.
- (4). Insurance and contracts to procure.
- (5). Partially maritime contracts.
11. — Shipbuilding contracts.
12. — Hire or employment of vessel and contracts of carriage and storage.
13. — Services.
14. — Repairs and supplies.
15. — Mortgages, bottomry, and hypothecation.
16. Liens.
17. Torts.
  - 17.1. — In general.
18. — Maritime torts in general.
19. — Injuries to vessels or other property.
20. — Personal injuries.
21. — Causing death.
22. — Torts partly committed or causing damage on land or nonnavigable waters.
23. Penalties, forfeitures, and seizures.
24. Captures and prizes.
25. Making and waiver of objections to jurisdiction.

**II. REMEDIES AND PROCEDURE  
IN GENERAL.**

26. Mode and forms of procedure in general.
27. Grounds of proceeding in personam.
28. Grounds of proceeding in rem.
29. Proceeding in personam and in rem for same cause.
30. Joinder of causes and proceedings.
31. Defenses in general.
32. Place of bringing suit.
  - 32.1. — In general.
  - 32.2. — Residence or place of business.
  - 32.3. — Corporations, suits against.
  - 32.4. — United States, suits against.
  - 32.5. — Waiver of defects or objections.
  - 32.10. — Change of venue.
    - (1). In general.
    - (2). Grounds for change in general.
    - (3). Venue laid in wrong district.
    - (4). Convenience of parties and witnesses; interest of justice.
    - (5). Application and proceedings thereon.



**16. ADMIRALTY****II. REMEDIES AND PROCEDURE  
IN GENERAL.**(Cont'd)

- (6). District to which change may be made.
- (7). Conditions on granting or refusing change.
- 33. Premature commencement of suit.
- 34. Limitations, laches and stale demands.
- 34.1. — In general.
- 34.2. — Prejudice, and excuse for delay.
- 34.3. — As against subsequent purchasers or encumbrancers.
- 34.4. — Following state statutes of limitation.
- 34.5. — Computation of limitation period.
- 34.6. — Suits by or against United States.
  - (.5). In general.
  - (1). Suits by United States.
  - (2). Suits against United States.
  - (2.1). — In general.
  - (3). — Charter cases.
  - (4). — Insurance cases.
  - (5). — Personal injury, maintenance and cure, and death cases.
  - (6). — Dismissal of prior suit improperly brought.
- 34.7. — Pleading and waiver.
- 35. Pendency of other proceeding.
- 36. Set-off, counterclaim, and cross-suit.
- 37. Consolidation and severance.
- 38. Stay of proceedings.
- 39. Abandonment, discontinuance, or dismissal.

**III. PARTIES, PROCESS, CLAIMS,  
AND STIPULATIONS OR  
OTHER SECURITY.**

- 40. Capacity to sue or be sued in admiralty.
- 41. Libelants.
- 42. Defendants.
- 43. Property subject to process.
- 44. Process and appearance in general.
  - Suits against the United States, see UNITED STATES*  
§519.
- 46. Process against the person.
- 47. Attachment and garnishment.
- 48. Process in proceedings in rem.
  - (1). In general.
  - (2). Arrest.
- 50. Intervention and bringing in new parties.

**III. PARTIES, PROCESS, CLAIMS, AND  
STIPULATIONS OR OTHER  
SECURITY.**(Cont'd)

- 51. Death of party.
- 52. Tender and payment into court.
- 53. Custody and disposition of property pending suit.
- 54. Bonds and stipulations in general.
- 55. Bail.
- 56. Security for dissolution of attachment.
- 57. Security for release of vessel or other property.
- 58. Security on cross-libel.

**IV. PLEADING.**

- 59. Allegations in general.
- 60. Libel.
- 61. Answer.
- 62. Cross-libel.
- 63. Reply.
- 65. Exceptions, demurrers, and special pleas in bar.
- 66. Amended and supplemental pleadings.
- 67. Signature and verification.
- 68. Exhibits.
- 69. Filing and service.
- 70. Issues, proof, and variance.
- 71. Defects and objections.

**V. MOTIONS.**

- 72. In general.

**VI. EVIDENCE, AND TAKING  
AND FILING PROOFS.**

- 73. Rules of evidence and mode of proof in general.
- 74. Pleadings as evidence.
- 75. Discovery.
  - 75.1. — In general.
  - 75.2. — Interrogatories and answers thereto.
    - (1). In general.
    - (2). Scope of interrogatories.
    - (2.1). — In general.
    - (3). — Relevancy and materiality.
    - (4). — Identity and location of witnesses and others.
    - (5). Answers in general.
    - (6). Production of documents.
    - (7). Effect of answers.

**16. ADMIRALTY****VI. EVIDENCE, AND TAKING AND FILING PROOFS.(Cont'd)**

- (8). Failure to answer.
- 75.3. — Depositions on oral examination.
- 75.4. — Production of documents and other tangible things.
  - (1). In general.
  - (2). Subject matter.
- 75.5. — Physical and mental examination.
- 75.6. — Requests for admission.
- 76. Depositions.
- 77. Testimony before commissioners.

**VII. PRELIMINARY PROCEEDINGS.**

- 78. In general.

**VIII. HEARING OR TRIAL.**

- 79. In general.
- 80. Trial by jury.
- 81. Decision.

**IX. REHEARING OR NEW TRIAL.**

- 82. In general.

**X. COMMISSIONERS AND PROCEEDINGS BEFORE THEM.**

- 83. Reference to commissioners.
- 84. Proceedings before commissioners.
- 85. Report.
- 86. Objections and exceptions to rulings and reports.
- 87. Confirmation or recommitment of report.

**XI. DECREE AND ENFORCEMENT THEREOF.**

- 88. Rendition, form, and requisites in general.
- 89. Decrees by default or pro confesso.
- 89.1. — In general.
- 90. — Requisites and validity.
- 91. — Opening or setting aside.
- 92. Judgments on bonds or stipulations.
- 93. Amendment, opening, or vacating.
- 94. Libel or bill for review.
- 95. Operation and effect of decree.
- 96. Execution in general.
- 97. Enforcement against property in court.
- 98. Enforcement against sureties or stipulators.
- 99. Sale or other disposition of property.

**XI. DECREE AND ENFORCEMENT THEREOF.(Cont'd)**

- 100. Rights and liabilities of purchasers.
- 101. Disposition of proceeds or remnants.

**XII. APPEAL.**

- 102. Appellate jurisdiction.
- 103. Decisions reviewable.
- 104. Right of review.
- 105. Presentation and reservation in lower court of grounds of review.
- 106. Parties.
- 107. Taking and perfecting appeal.
- 107.1. — In general.
- 108. — Time of taking proceedings.
- 109. — Assignment of errors.
- 110. — Petition or other proceedings for appeal.
- 111. — Appeal bonds.
- 112. — Citation, notice, and appearance.
- 113. Effect of appeal.
- 114. Stay of execution.
- 115. Record.
- 116. Hearing and rehearing.
- 117. Amendments, new pleadings and proofs, and trial of cause anew.
- 118. Review.
- 118.1. — In general.
- 118.2. — Interlocutory, collateral, and supplementary proceedings and questions.
- 118.3. — Parties entitled to allege error.
- 118.4. — Presumptions.
- 118.5. — Discretion of lower court.
- 118.6. — Questions of fact in general.
  - (1). In general.
  - (2). Verdicts and findings.
- 118.7. — Findings of court.
  - (1). In general.
  - (2). Sufficiency of evidence in support.
  - (3). Conflicting evidence.
  - (4). Against weight of evidence.
  - (5). Clearly erroneous findings.
- 118.8. — Findings of commissioner.
- 118.9. — Harmless error.
- 118.10. — Decisions of intermediate courts and subsequent appeals.
- 119. Determination and disposition of cause.
- 120. Liabilities on appeal bonds.

**16. ADMIRALTY****XIII. COSTS.**

- 121. Power to award in general.
- 122. Parties to and against whom awarded.
- 123. Security for payment.
- 124. Amount and items.
- 125. Taxation.
- 126. Costs on appeal.
- 127. Payment and remedies for collection.

**17. ADOPTION****SUBJECTS INCLUDED**

Taking child of another as one's own child  
 Proceedings therefor  
 Rights, duties, and liabilities arising from adoption

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Issues peculiar to adoption of Indian children, see INDIANS ¶138  
 Legitimation of nonmarital children, see PARENT AND CHILD I-III

- I. IN GENERAL, ¶101-140.
- II. GROUNDS, FACTORS, AND CONSIDERATIONS IN GENERAL, ¶141-180.
  - (A) IN GENERAL, ¶141-150.
  - (B) FACTORS RELATING TO PERSONS SEEKING TO ADOPT, ¶151-170.
  - (C) FACTORS RELATING TO CHILD, ¶171-180.
- III. CONSENT TO ADOPTION, ¶181-270.
  - (A) IN GENERAL; NECESSITY, ¶181-200.
  - (B) EXCEPTIONS TO CONSENT REQUIREMENT, ¶201-230.
  - (C) REQUISITES AND VALIDITY OF CONSENT, ¶231-250.
  - (D) WITHDRAWAL OR REVOCATION OF CONSENT, ¶251-270.
- IV. ACTIONS AND PROCEEDINGS, ¶271-320.
- V. EVIDENCE, ¶321-340.

- VI. OPERATION AND EFFECT OF ADOPTION, ¶341-360.
- VII. SETTING ASIDE OR REVOKING ADOPTION, ¶361-390.
  - (A) IN GENERAL, ¶361-370.
  - (B) ACTIONS AND PROCEEDINGS, ¶371-390.
- VIII. INTERSTATE AND INTERNATIONAL ADOPTIONS, ¶391-400.
- IX. APPELLATE REVIEW, ¶401-419.

**I. IN GENERAL.**

- 101. In general.
- 102. Nature and purpose of adoption in general.
- 103. — In general.
- 104. — Adoption as right or privilege.
- 105. Statutory nature of adoption.
- 106. — In general.
- 107. — Statutory provisions in general.
- 108. What law governs.
- 109. Relation between state and federal law; preemption.
- 110. Adoption agencies, facilitators, and service providers; indirect placement.
- 111. — In general.
- 112. — Licensing and regulation.
- 113. — Duties and liabilities.
- 114. Independent or private adoption; direct placement.
- 115. Adoption agreements.
- 116. Virtual adoption.
- 117. Equitable adoption.
- 118. Adoption by estoppel.
- 119. Adoption by deed or declaration.
- 120. — In general.
- 121. — Notarial adoption.
- 122. Open or closed adoption.
- 123. Adoption records.
- 124. Adoption-related payments, fees, and expenses.
- 125. — In general.
- 126. — Judicial approval in general.
- 127. — Payments to adoption agencies, facilitators, and service providers.
- 128. — Payments to birth parents.
- 129. Public stipends and subsidies; adoption assistance benefits.
- 130. Wrongful adoption.
- 131. Offenses and prosecutions.

**17. ADOPTION****II. GROUNDS, FACTORS, AND CONSIDERATIONS IN GENERAL.****(A) IN GENERAL.**

- 141. In general.
- 142. Interest and role of government.
- 143. Interest and role of birth parents.
- 144. Race, color, ethnicity, or national origin.
- 145. Religion.

**(B) FACTORS RELATING TO PERSONS SEEKING TO ADOPT.**

- 151. In general.
- 152. Fitness or competence in general.
- 153. Age restrictions.
- 154. Residency requirements.
- 155. Guardians or custodians in general.
- 156. Relatives in general.
- 157. Grandparents.
- 158. Persons in loco parentis; de facto parents.
- 159. Foster parents.
- 160. Spouse or partner of birth parent; step-parents.
- 161. — In general.
- 162. — Former spouse or partner.
- 163. Single or unmarried persons.
- 164. — In general.
- 165. — Unmarried or cohabiting partners.
- 166. Same-sex spouses or partners.
- 167. Former parents.

**(C) FACTORS RELATING TO CHILD.**

- 171. In general.
- 172. Welfare and best interest of child.
- 173. Adult children.

**III. CONSENT TO ADOPTION.****(A) IN GENERAL; NECESSITY.**

- 181. In general.
- 182. Persons who may or must consent in general.
- 183. Birth parents.
- 184. — In general.
- 185. — Mothers.
- 186. — Fathers.
- 187. — Marital status; unwed parents.
- 188. — Divorced parents.
- 189. — Minor parents.

**III. CONSENT TO ADOPTION.(Cont'd)**

- 190. Spouses and partners of parents.
- 191. Participants in assisted reproduction.
- 192. Adoption agencies, facilitators, and service providers.
- 193. Guardians or custodians.
- 194. Person being adopted.
- 195. Effect of failure to obtain consent in general.

**(B) EXCEPTIONS TO CONSENT REQUIREMENT.**

- 201. In general.
- 202. Grounds, factors, and considerations in general.
- 203. Interest, needs, and welfare of child in general.
- 204. Relinquishment or surrender of rights in general.
- 205. Termination of rights in general.
- 206. Unfitness or incompetence.
- 207. Misconduct.
- 208. Deprivation, neglect, or abuse.
- 209. Absence, abandonment, or desertion.
- 210. — In general.
- 211. — Efforts to communicate or visit.
- 212. — Efforts to establish parentage.
- 213. — Intent, willfulness, and malice.
- 214. — Duration.
- 215. Nonsupport.
- 216. — In general.
- 217. — Duration.
- 218. Deprivation of custody; interference.
- 219. Incarceration.
- 220. Renewal of interest.

**(C) REQUISITES AND VALIDITY OF CONSENT.**

- 231. In general.
- 232. Formal requisites.
- 233. Physical or mental incapacity.
- 234. Mistake.
- 235. Fraud, duress, or undue influence.
- 236. Consent by conduct; implied consent.
- 237. — In general.
- 238. — Estoppel or waiver.
- 239. Time for consent.
- 240. Effect of consent.

**(D) WITHDRAWAL OR REVOCATION OF CONSENT.**

- 251. In general.

**17. ADOPTION****III. CONSENT TO ADOPTION.(Cont'd)**

- 252. Grounds, factors, and considerations.
- 253. — In general.
- 254. — Judicial authority and discretion in general.
- 255. — Physical or mental incapacity.
- 256. — Mistake.
- 257. — Fraud, duress, or undue influence.
- 258. — Welfare and best interest of child.
- 259. Time for withdrawing or revoking consent.

**IV. ACTIONS AND PROCEEDINGS.**

- 271. In general.
- 272. Nature, purpose, and form of proceedings.
- 273. Judicial role in general.
- 274. Jurisdiction and venue.
- 275. — In general.
- 276. — Consent as jurisdictional requirement.
- 277. Time for proceedings; limitations and laches.
- 278. — In general.
- 279. — Proceedings to withdraw, revoke, or set aside consent.
- 280. Parties.
- 281. — In general.
- 282. — Standing.
- 283. — Real parties in interest.
- 284. — Necessary and indispensable parties; joinder.
- 285. — New parties and change of parties.
- 286. Process or other notice.
- 287. Appearance.
- 288. Pleading.
- 289. — In general.
- 290. — Amended and supplemental pleadings.
- 291. Interviews, inspections, assessments, and studies.
- 292. Reference; reports and recommendations.
- 293. Consolidation and severance.
- 294. Dismissal or stay.
- 295. Trial or hearing.
- 296. — In general; nature and purpose.
- 297. — Necessity; right to trial or hearing.

**IV. ACTIONS AND PROCEEDINGS.(Cont'd)**

- 298. — Time for trial or hearing; continuance.
- 299. — Questions of law or fact.
- 300. — Findings, conclusions, and determination.
- 301. Rehearing or new trial.
- 302. Judgment, order, or decree.
- 303. — In general.
- 304. — Default.
- 305. — Construction and interpretation.
- 306. — Amendment and correction; modification.
- 307. — Conclusiveness.
- 308. Administrative proceedings.
- 309. — In general.
- 310. — Judicial review.
- 311. Counsel.
- 312. Costs and fees.

**V. EVIDENCE.**

- 321. In general; admissibility.
- 322. Presumptions, inferences, and burden of proof.
- 323. — In general.
- 324. — Interest, needs, and welfare of child in general.
- 325. — Consent to adoption and exceptions thereto in general.
- 326. — Absence, abandonment, or desertion.
- 327. — Nonsupport.
- 328. — Withdrawal or revocation of consent to adoption.
- 329. Degree of proof.
- 330. Weight and sufficiency.
- 331. — In general.
- 332. — Interest, needs, and welfare of child in general.
- 333. — Consent to adoption and exceptions thereto in general.
- 334. — Absence, abandonment, or desertion.
- 335. — Nonsupport.
- 336. — Withdrawal or revocation of consent to adoption.
- 337. Proof of adoption.

**17. ADOPTION****VI. OPERATION AND EFFECT OF ADOPTION.**

- 341. In general.
- 342. Status and rights of adopted person.
- 343. — In general.
- 344. — Name, and change thereof.
- 345. Parental rights, duties, and liabilities.
- 346. — In general.
- 347. — Birth parents.
- 348. — Adoptive parents.
- 349. Post-adoption agreements.

**VII. SETTING ASIDE OR REVOKING ADOPTION.****(A) IN GENERAL.**

- 361. In general.
- 362. Grounds, factors, and considerations.
- 363. — In general.
- 364. — Judicial authority and discretion in general.
- 365. — Errors and irregularities.
  - (1). In general.
  - (2). Failure of consent in general.
  - (3). Fraud, duress, or undue influence.
- 366. — Welfare and best interest of child.
- 367. Estoppel and waiver.

**(B) ACTIONS AND PROCEEDINGS.**

- 371. In general.
- 372. Jurisdiction and venue.
- 373. Time for proceedings; limitations and laches.
- 374. Parties; standing.
- 375. Process or other notice; appearance.
- 376. Pleading.
- 377. Evidence.
- 378. — In general; admissibility.
- 379. — Presumptions, inferences, and burden of proof.
- 380. — Degree of proof.
- 381. — Weight and sufficiency.
- 382. Dismissal.
- 383. Trial or hearing.
- 384. — In general.
- 385. — Findings, conclusions, and determination.
- 386. Rehearing or new trial.
- 387. Judgment, order, or decree.
- 388. Costs and fees.

**VIII. INTERSTATE AND INTERNATIONAL ADOPTIONS.**

- 391. In general.
- 392. Foreign decrees and orders.
- 393. Jurisdiction of forum court.
- 394. Actions and proceedings.

**IX. APPELLATE REVIEW.**

- 401. In general.
- 402. Decisions reviewable.
- 403. Persons entitled to seek review; parties; standing.
- 404. Time for review.
- 405. Petition or other application for review.
- 406. Preservation of error; waiver and estoppel; record.
- 407. Proceedings on review; hearing.
- 408. Scope, standard, and extent of review.
- 409. — In general.
- 410. — De novo review.
- 411. — Discretion of lower court.
- 412. — Review for correctness or error.
- 413. — Particular subjects of review.
  - (1). In general.
  - (2). Interest, needs, and welfare of child in general.
  - (3). Consent to adoption and exceptions thereto in general.
  - (4). Absence, abandonment, or desertion.
  - (5). Nonsupport.
  - (6). Withdrawal or revocation of consent to adoption.
  - (7). Setting aside or revoking adoption.
  - (8). Foreign adoptions.
- 414. Presumptions and burden of showing error.
- 415. Harmless and reversible error.
- 416. Determination and disposition.
- 417. — In general.
- 418. — Remand and proceedings thereon.
- 419. Further review.

**18. ADULTERATION****18. ADULTERATION****SUBJECTS INCLUDED**

Corruption or dilution of articles of commerce by admixture of foreign substances, and factitious imitation or simulation of such articles in general

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Civil liabilities on sales of adulterated goods, see SALES

Inspection for prevention of fraud, see INSPECTION

Regulations, for protection of public health, of manufacture, sale, and use of articles of —

Food and drink, see FOOD

Medicines, see HEALTH

1. Power to make regulations.
2. Constitutionality of regulations.
3. Statutory provisions.
4. Nature and elements of offenses.
5. Defenses.
6. Persons liable.
7. Penalties and forfeitures and actions therefor.
8. Jurisdiction of criminal prosecutions.
9. Indictment or information.
- 9.1. — In general.
10. — Requisites and sufficiency.
11. — Issues, proof, and variance.
12. Evidence.
13. Trial and review.

**20. ADVERSE POSSESSION****SUBJECTS INCLUDED**

Possession of property so inconsistent with the possession or title of another as to

constitute an element of title or evidence of title in the possessor

Nature, requisites, incidents, operation and effect of such possession

Evidence relating thereto

Acquisition of title thereby

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Cotenants, effect of adverse possession as between, see PROPERTY IV

Indian lands, see INDIANS ¶201

Limitations of remedies in general, see LIMITATION OF ACTIONS

Particular classes of persons, effect of adverse possession on rights of, see INFANTS, MENTAL HEALTH, and other specific topics

Particular estates or interests, effect of adverse possession on, see PROPERTY III(C), LANDLORD AND TENANT, EASEMENTS, MINES AND MINERALS, WATER LAW, and other specific topics

Particular remedies, effect of adverse possession to sustain or defeat, see EJECTMENT, TRESPASS, and other specific topics

Validity of conveyances of land held adversely, and of agreements to share property to be recovered by suit, see CHAMPERTY AND MAINTENANCE

- I. NATURE AND REQUISITES, ¶1–95.
  - (A) ACQUISITION OF RIGHTS BY PRESCRIPTION IN GENERAL, ¶1–13.
  - (B) ACTUAL POSSESSION, ¶14–27.
  - (C) VISIBLE AND NOTORIOUS POSSESSION, ¶28–33.
  - (D) DISTINCT AND EXCLUSIVE POSSESSION, ¶34–38.
  - (E) DURATION AND CONTINUITY OF POSSESSION, ¶39–57.
  - (F) HOSTILE CHARACTER OF POSSESSION, ¶58–85.
  - (G) PAYMENT OF TAXES, ¶86–95.
- II. OPERATION AND EFFECT, ¶96–109.
  - (A) EXTENT OF POSSESSION, ¶96–103.
  - (B) TITLE OR RIGHT ACQUIRED, ¶104–109.
- III. PLEADING, ¶110–111.
- IV. EVIDENCE, ¶112–114.
- V. TRIAL, ¶115–117.

**20. ADVERSE POSSESSION****I. NATURE AND REQUISITES.****(A) ACQUISITION OF RIGHTS BY PRESCRIPTION IN GENERAL.**

1. Nature and grounds of prescription.
2. What law governs.
3. Constitutional and statutory provisions in general.
4. Against whom prescription may be claimed.
5. Property subject to prescription.
- 5.1. — In general.
6. — Rights and interests of private individuals.
7. — Public property in general.
  - (1). In general.
  - (2). Public lands in general.
  - (3). Public lands granted to individuals.
8. — Property dedicated to or acquired for public use.
  - (1). In general.
  - (2). Highways and turnpikes.
  - (3). School lands.
  - (4). Railroad property.
9. — Property held by municipalities for other than public use.
10. Persons entitled to claim by prescription.
11. Intent to acquire title or right.
13. Character and elements of adverse possession in general.

**(B) ACTUAL POSSESSION.**

14. Necessity.
15. Entry on land.
16. Acts of ownership in general.
  - (1). In general.
  - (2). Marking boundaries and entry to make survey.
  - (3). Wild lands.
17. Use and occupation.
18. Residence.
19. Inclosure.
20. Improvements.
21. Cultivation.
22. Pasturage.
23. Cutting timber.
24. Occasional or temporary use or occupation.
25. Possession of agent, tenant, or vendee.

**I. NATURE AND REQUISITES.(Cont'd)**

26. Lawful possession.
27. Evidence.

**(C) VISIBLE AND NOTORIOUS POSSESSION.**

28. Necessity.
29. Open and visible character of possession.
30. Notoriety of possession.
31. Knowledge of or notice to former owner.
32. Filing or recording notice.
33. Evidence.

**(D) DISTINCT AND EXCLUSIVE POSSESSION.**

34. Necessity.
35. Possession distinct from that of others.
36. Possession exclusive of others.
37. Possession exclusive of former owner.
38. Evidence.

**(E) DURATION AND CONTINUITY OF POSSESSION.**

39. Time requisite for acquisition of rights.
40. — In general.
41. — Under claim or color of title.
42. Beginning of adverse possession.
43. Tacking successive possessions.
  - (1). In general.
  - (2). When possessions may be tacked in general.
  - (3). Privity of estate in general.
  - (4). Vendor and purchaser.
  - (5). Landlord and tenant.
  - (6). Decedent and heirs and representatives.
  - (7). Same claimant.
  - (8). Character of former possessions.
44. Continuity in general.
45. Suspension of statute of limitations.
46. Interruption of possession.
  - 46.1. — In general.
  47. — By former owner, payment of taxes.
  48. — By third persons.
  49. — By public.
50. Recognition of title of former owner.
51. Adjudication as to title or right.
52. Purchase of outstanding title or claim.
53. Abandonment.
54. Completion of period.
55. Disability or death of former owner.



**20. ADVERSE POSSESSION****I. NATURE AND REQUISITES.(Cont'd)**

56. Extension of period.

57. Evidence.

**(F) HOSTILE CHARACTER OF POSSESSION.**

58. Necessity.

59. Possession consistent with that of another, and possession becoming adverse after amicable entry.

60. — In general.

(1). In general.

(2). Permissive entry and occupation, and license.

(3). Recognition of better or other title or claim.

(4). Possession becoming adverse.

(5). Of street or highway.

(6). Of railroad right of way.

61. — By persons in fiduciary relations.

62. — By or against heirs, devisees, or surviving husband or wife, or their grantees.

(.5). In general.

(1). By heirs, legatees, and their privies against coheirs, colegatees, and their privies.

(2). By heirs or devisees against ancestor's widow, administrator, or creditors.

(3). By surviving spouse and privies against heirs, and their privies.

63. — By vendor or purchaser.

(1). In general.

(2). By vendor or grantor in general.

(3). By grantor in deed fraudulent as to creditors.

(4). Possession of grantor becoming adverse to grantee.

(5). By purchaser and his privies in general.

(6). By grantee against condition, reservation, or exception in deed.

(7). Possession of purchaser becoming adverse to vendor.

64. — By donor or donee, or bailor or bailee.

65. Entry and possession by mistake.

(.5). In general.

(1). Mistake as to location.

(2). Mistake as to estate held.

**I. NATURE AND REQUISITES.(Cont'd)**

(3). Mistake in conveyance or survey.

66. Extension of possession to boundaries or fences.

(1). In general.

(2). Mistake as to boundaries.

67. Adverse entry.

68. Necessity of claim or color of title.

69. Validity and sufficiency of title or claim.

70. — In general.

71. — Validity and sufficiency of instruments in general.

(1). In general.

(2). Void, irregular, or defective deeds or grants.

(3). Conveyance by one without title or right of possession.

72. — Bonds and contracts to convey.

73. — Patents, grants, certificates, surveys, and plats.

74. — Judgments and execution and judicial sales.

75. — Partition.

76. — Mortgages and mortgage foreclosures.

77. — Administrators' and guardians' sales and deeds.

78. — Descent and devise.

79. — Tax sales and tax deeds.

(1). In general.

(2). Deed from purchaser at tax sale.

(3). Assessment leases.

(4). Tax deeds.

80. — Description of property.

(1). In general.

(2). Sufficiency of description.

(3). Mistake in description.

81. — Persons executing instruments.

82. — Record of instruments.

83. Possession under conflicting titles.

84. Good faith and diligence.

85. Evidence.

(.5). In general.

(1). Presumptions and burden of proof.

(2). Admissibility.

(3). Weight and sufficiency in general.

(4). Possession consistent with that of another, and possession becoming

**20. ADVERSE POSSESSION****I. NATURE AND REQUISITES.**(Cont'd)

ing adverse after amicable entry.

- (5). Validity and sufficiency of title or claim.

**(G) PAYMENT OF TAXES.**

- 86. Necessity in general.
- 87. Statutory provisions.
- 88. Act of ownership.
- 89. Condition of acquiring title or right.
- 90. Property assessed.
- 91. Color of title.
- 92. Persons making payment.
- 93. Duration and continuity of payment.
- 94. Sufficiency of payment.
- 95. Evidence.

**II. OPERATION AND EFFECT.****(A) EXTENT OF POSSESSION.**

- 96. Property in actual possession.
- 97. Possession without claim of right or color of title.
- 98. Possession under claim of right without color of title.
- 99. Possession under color of title.
- 99.1. — In general.
- 100. — Constructive possession in general.
  - (1). In general.
  - (2). Registration of conveyance.
  - (3). Intention of occupant.
  - (4). Sufficiency of description and extending possession beyond bounds laid down in instrument of title.
  - (5). Entry under conveyance from one without title, or under void deed.
  - (6). Possession under particular instruments or titles.
- 101. — Relation to each other of different premises or parts of same premises.
- 102. — Sale or lease of part of property or subdivision thereof.
- 103. — Mixed possession under hostile titles, or conflicting grants or surveys.

**(B) TITLE OR RIGHT ACQUIRED.**

- 104. Presumption of grant.

**II. OPERATION AND EFFECT.**(Cont'd)

- 105. Rights and liabilities of occupants.
- 106. Nature and extent of title or right.
  - (1). In general.
  - (2). Limitation as bar to action for recovery.
  - (3). Extinction of title in original holder.
  - (4). Vesting of title in adverse occupant.
  - (5). Aggressive character of title acquired.
- 107. Amount of land.
- 108. Establishment of boundaries.
- 109. Abandonment or forfeiture of title after acquisition.

**III. PLEADING.**

- 110. Pleading possession.
  - (1). In general.
  - (2). Sufficiency of plea in general.
  - (3). Exclusiveness, duration, and continuity of possession.
  - (4). Issues, proof, and variance.
- 111. Pleading title or right.

**IV. EVIDENCE.**

- 112. Presumptions and burden of proof.
- 113. Admissibility of evidence.
- 114. Weight and sufficiency of evidence.
  - (1). In general.
  - (2). Boundaries and extent of possession.
  - (3). Effect of color of title.

**V. TRIAL.**

- 115. Questions for jury.
  - (1). In general.
  - (2). Actual possession.
  - (3). Open and exclusive possession.
  - (4). Duration and continuity of possession.
  - (5). Hostile character of possession.
  - (6). Color of title and good faith.
  - (7). Extent of possession.
- 116. Instructions.
  - (1). In general.
  - (2). Actual possession.

**20. ADVERSE POSSESSION****V. TRIAL.**(Cont'd)

- (3). Visible and notorious and distinct and exclusive possession.
  - (4). Duration and continuity of possession.
  - (5). Hostile character of possession.
  - (6). Payment of taxes.
  - (7). Extent of possession.
  - (8). Instructions as to presumptions and burden of proof and sufficiency of evidence.
117. Verdict and findings.

**21. AFFIDAVITS****SUBJECTS INCLUDED**

Formal declarations or statements in writing and under oath, as to matters of fact, whether made voluntarily or not, taken ex parte for use in legal proceedings

Making, taking and requisites of such affidavits

Amendment of defects

Use in evidence in general

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Claim, merits, or defense, affidavits of, see PLEADING

Depositions taken on interrogatories subject to cross-examination, see PRETRIAL PROCEDURE

Evidence, competency of in general, see EVIDENCE

On motion for summary judgment, see JUDGMENT for state cases and FEDERAL CIVIL PROCEDURE for federal cases, generally

Particular proceedings in actions or other legal proceedings, affidavits for purposes incident to, see ARREST, CREDITORS' REMEDIES, HABEAS CORPUS, and other specific topics

Witnesses, competency of, see WITNESSES

- 1. Nature and functions in general.

- 2. Persons who may make.
- 3. Knowledge or information of affiant.
- 4. Compelling making of affidavit.
- 5. Authority to take.
- 6. Mode of taking.
- 7. Entitling.
- 8. Venue.
- 9. Form and contents.
- 10. Date.
- 11. Signature and oath.
- 12. Jurat or certificate of officer.
- 13. Affidavit taken in other state or foreign country.
- 13.1. — In general.
- 14. — Authority of officer and mode of taking.
- 15. — Authentication.
- 16. Amendment.
- 17. Sufficiency and effect of averments.
- 18. Use in evidence.
- 19. Recording.

**23. AGRICULTURE****SUBJECTS INCLUDED**

Promotion and regulation of agricultural pursuits in general

Public aid and protection to those engaged therein

Agricultural societies

Agricultural liens

Other incidental rights and remedies

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Bounties, see BOUNTIES

Crops, ownership of, see CROPS

Drainage of lands, see WATER LAW

Employers and employees, matters affecting the relation between, see LABOR AND EMPLOYMENT

Environmental law, see ENVIRONMENTAL LAW

Food stamps, child nutrition, and other public aid, see PUBLIC ASSISTANCE

**23H. ALCOHOLIC BEVERAGES**

Irrigation of lands, see WATER LAW

Land banks and farm credit, see FINANCE, BANKING, AND CREDIT VII

Leases of agricultural lands and liens for rent, see LANDLORD AND TENANT

Levees, see WATER LAW

Rural aid and development, see UNITED STATES I(I)

Transportation, storage and inspection of agricultural products, regulation of, see COMMERCE, CARRIERS, WAREHOUSEMEN, INSPECTION

1. Constitutional and statutory provisions.
2. Agricultural boards and officers.
3. Public aid.
  - 3.1. — In general.
  - 3.2. — Soil conservation incentives and payments.
  - 3.3. — Marketing and production control in general; quotas and allotments.
    - (1). In general.
    - (2). Transfer of allotments.
    - (3). Administrative officers and committees.
    - (4). Judicial review of administrative action.
    - (5). Penalties.
  - 3.4. — Particular crops, control.
    - (1). In general.
    - (2). Cotton.
    - (3). Tobacco.
    - (4). Wheat and corn; feed grain.
  - 3.5. — Credit, loans, and price supports.
 

*Land banks and farm credit, see FINANCE, BANKING, AND CREDIT VII.*

    - (1). In general.
    - (2). Milk and dairy products.
  - 3.6. — State and local aid.
  - 3.7. — Commodity Credit Corporation.
4. Agricultural societies.
  - (1). In general.
  - (2). Nature and powers.
  - (3). Liabilities.
5. Agricultural exhibitions and fairs.
6. Co-operative corporations or associations.
7. Fertilizers.
8. Weeds and other noxious plants.
9. Destructive insects, birds, and other animals, and diseases of plants.
- 9.2. Pesticides and herbicides.

*Environmental regulation, see ENVIRONMENTAL LAW; Products liability, see PRODUCTS LIABILITY.*

- 9.3. — In general.
- 9.4. — Aerial application; crop dusting.
- 9.5. — Tort liability.
- 9.6. — Offenses and penalties.
10. Agricultural liens.
  - 10.1. — In general.
11. — Right to lien.
12. — Proceedings to perfect.
13. — Operation and effect.
14. — Waiver, discharge, release, and satisfaction.
15. — Enforcement.
16. Illegal traffic in agricultural products.

**23H. ALCOHOLIC BEVERAGES****SUBJECTS INCLUDED**

Regulation and prohibition of manufacture, sale, or use of intoxicating liquors and alcoholic beverages

Rights of property and traffic in such liquors and beverages

Liabilities for injuries from the sale, use, etc., thereof

Prevention of unlawful dealings therein

Violations of liquor laws, and prosecution and punishment thereof as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Adulteration as public offense, see ADULTERATION

Commerce between states, etc., regulations regarding intoxicating liquors and alcoholic beverages as articles of, see COMMERCE

Indians, sale to, see INDIANS

Inspection for prevention of fraud or commercial purposes, see INSPECTION

Persons dependent upon or addicted to alcohol, see CHEMICAL DEPENDENTS

Taxes not specific to intoxicating liquors or alcoholic beverages, see INTERNAL REVENUE, TAXATION

**23H. ALCOHOLIC BEVERAGES**

- I. IN GENERAL, ☞1-10.
- II. CONTROL AND REGULATION, ☞11-890.
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  - (C) LOCAL CONTROL AND REGULATION IN GENERAL, ☞41-70.
  - (D) LOCAL OPTION, ☞71-160.
    - 1. IN GENERAL, ☞71-90.
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    - 3. OPERATION AND EFFECT OF ADOPTION OR REJECTION, ☞141-150.
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**23H. ALCOHOLIC BEVERAGES****VI. CIVIL LIABILITY FOR PROVIDING ALCOHOL; DRAM-SHOP LAWS**

—Cont'd

**(G) ACTIONS AND PROCEEDINGS**

—Cont'd

2. PLEADING, Ⓔ1161–1170.
3. EVIDENCE, Ⓔ1171–1190.
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**I. IN GENERAL.**

1. In general.
2. What law governs.
3. — In general.
4. — Property and contract rights.
5. — Civil liability for providing alcohol; dram-shop laws.
6. Federal preemption.
7. — In general.
8. — Civil liability for providing alcohol; dram-shop laws.

**II. CONTROL AND REGULATION.****(A) IN GENERAL.**

11. In general.
12. Federal control and regulation in general.
13. — In general.
14. — Jurisdiction, powers, and authority in general.
15. — Places within exclusive federal jurisdiction.
16. — Territories.
17. State control and regulation in general.
18. — In general.
19. — Jurisdiction, powers, and authority in general.
20. Police power in general.
21. Delegation of powers in general.
22. Constitutional and statutory provisions in general.
23. — In general.
24. — Eighteenth Amendment.
25. — Twenty-first Amendment.

**(B) AGENCIES, BOARDS, COMMISSIONS, AND DEPARTMENTS.**

31. In general.
32. Jurisdiction, powers, and authority.
33. Officers and employees.
34. — In general.

**II. CONTROL AND REGULATION.(Cont'd)**

35. — Powers, duties, and liabilities.
36. — Immunity.
37. Rules and regulations in general.
38. Rulemaking.
39. Administrative construction of statutes and regulations; judicial deference.

**(C) LOCAL CONTROL AND REGULATION IN GENERAL.**

41. In general.
42. Jurisdiction, powers, and authority.
43. — In general.
44. — Delegated powers in general.
45. — Regulations within local power in general.
46. — Power to prohibit or restrict as to locality.
47. — Power to license or tax.
48. — Power to prescribe punishment for violations.
49. Officers and employees.
50. — In general.
51. — Powers, duties, and liabilities.
52. — Immunity.
53. Ordinances in general.
54. Concurrent and conflicting regulation by state and local authorities.
55. — In general.
56. — Prohibition in general.
57. — Sale or traffic in general.
58. — Transactions with prohibited persons.
59. — Nature and conduct of business.
60. — Manufacture and production.
61. — Distribution.
62. — Transportation and shipping; inter-jurisdictional traffic.
63. — Purchase.
64. — Possession and storage.
65. — Consumption and use.
66. — Licenses.
67. — Fees and taxes.

**(D) LOCAL OPTION.****1. IN GENERAL.**

71. In general.
72. Power to allow or exercise local option in general.

**23H. ALCOHOLIC BEVERAGES****II. CONTROL AND REGULATION.(Cont'd)**

- 73. Constitutional and statutory provisions.
- 74. — In general.
- 75. — Purpose and construction in general.
- 76. — Validity.
- 77. — Amendment and repeal.
- 78. — Retroactivity.
- 79. Administrative regulations and local ordinances.
- 80. Matters subject to local option.
- 81. Necessity of local election to determine question.
- 82. Determination by local authorities without election, and proceedings therefor.

**2. DETERMINATION BY LOCAL ELECTION.**

- 91. In general.
- 92. Power to call election or submit question to voters.
- 93. District or territory in which election may be ordered.
- 94. Successive elections and resubmission.
- 95. — In general.
- 96. — Part of territory covered by former election.
- 97. Application for election.
- 98. — In general.
- 99. — Proceedings on application and record thereof.
- 100. — Judicial review.
- 101. Order as to election.
- 102. — In general.
- 103. — Notice.
- 104. Conduct of election.
- 105. — In general.
- 106. — Officers.
- 107. — Time for election.
- 108. — Registration and poll lists.
- 109. — Form of submission and ballots.
- 110. Count of votes, returns, and canvass.
- 111. Declaration and publication of result of election.
- 112. — In general.
- 113. — Designation of territory.
- 114. — Provisions of order as to notice.
- 115. — Publication and proof thereof.
- 116. — Operation and effect.
- 117. — Injunction.

**II. CONTROL AND REGULATION.(Cont'd)**

- 118. Election contests.
- 119. — In general.
- 120. — Grounds.
- 121. — Time to sue; limitations and laches.
- 122. — Jurisdiction and venue.
- 123. — Persons entitled to sue or subject to suit; standing; parties.
- 124. — Process or other notice; appearance.
- 125. — Pleadings, petitions, and applications.
- 126. — Evidence.
- 127. — Trial or hearing.
- 128. — Determination, judgment, and relief.
  - (1). In general.
  - (2). Injunction.
- 129. — Further judicial review.
- 130. — Costs and fees.
- 131. Resubmission after defective or invalid election.

**3. OPERATION AND EFFECT OF ADOPTION OR REJECTION.**

- 141. In general.
- 142. Territory affected.
- 143. Effect on other laws or regulations.
- 144. Effect of change of boundary.
- 145. Evidence of adoption.

**4. REVOCATION OR REPEAL OF ADOPTION.**

- 151. In general.
- 152. Submission of question of repeal to popular vote.
- 153. Operation and effect of repeal.
- 154. Reinstatement or revival of adoption.

**(E) PARTICULAR SUBJECTS OF CONTROL AND REGULATION.****1. IN GENERAL.**

- 161. In general.
- 162. Prohibition in general.
- 163. Offenses and penalties in general.
- 164. Activities and transactions regulated or prohibited in general.
- 165. — In general.
- 166. — Sale or traffic in general.
  - (1). In general.

**23H. ALCOHOLIC BEVERAGES****II. CONTROL AND REGULATION.(Cont'd)**

- (2). Right to sell or traffic in alcohol.
- 167. — Solicitation of orders; executory contracts.
- 168. — Credit transactions.
- 169. — Barter, exchange, or loan.
- 170. — Gifts.
- 171. — Sale or service for on-premises or off-premises consumption.
- 172. — Sale or service by prohibited persons.
- 173. — Serving with meals.
- 174. Products regulated or prohibited.
- 175. — In general.
- 176. — Beer, ale, and other malt beverages.
- 177. — Wine, cider, and fruit juices.
- 178. — Ingredients in articles of food or drink.
- 179. — Ingredients in medicinal preparations.
- 180. — Purity and quality.
- 181. Purpose of activity or transaction; intent of actor.
- 182. — In general.
- 183. — Scientific, industrial, medicinal, or sacramental purpose.
- 184. Place of activity or transaction.
- 185. — In general.
- 186. — Local option districts; “dry” areas.
- 187. Time of activity or transaction.
- 188. — In general.
- 189. — Sundays and holidays.
- 190. — Election days.
- 191. Price.
- 192. — In general.
- 193. — Discounts and rebates.
- 194. Quantity.
- 195. Mode of bottling or other packaging.
- 196. Physicians and other health care providers.
- 197. Private clubs and associations.

**2. TRANSACTIONS WITH PROHIBITED PERSONS.**

- 201. In general.
- 202. Underage persons.
- 203. — In general.
- 204. — Intent, knowledge, or good faith of provider.

**II. CONTROL AND REGULATION.(Cont'd)**

- 205. — Consent of parent or guardian.
- 206. Students.
- 207. Intoxicated or alcoholic persons.

**3. NATURE AND CONDUCT OF BUSINESS.**

- 211. In general.
- 212. Bars, saloons, and taverns in general.
- 213. Nuisance in general.
- 214. Keeping place for unlawful sale or liquor nuisance.
- 215. Allowing unlawful use on premises.
- 216. Allowing disorderly premises.
- 217. Amusement and entertainment activities.
- 218. — In general.
- 219. — Dancing, nudity, and sexual conduct; adult entertainment.
- 220. — Gaming and lotteries.
- 221. Employment of prohibited persons.
- 222. — In general.
- 223. — Underage persons.
- 224. Admittance of prohibited persons.
- 225. — In general.
- 226. — Underage persons.
- 227. — Intoxicated or alcoholic persons.
- 228. Maintaining screens and other obstructions of view.
- 229. Hours of operation.
- 230. Bookkeeping and recordkeeping.

**4. MANUFACTURE AND PRODUCTION.**

- 241. In general.
- 242. Possession of manufacturing equipment.
- 243. Purpose and intent.
- 244. — In general.
- 245. — Scientific, industrial, medicinal, or sacramental purpose.

**5. DISTRIBUTION.**

- 251. In general.
- 252. Mode or system of distribution; wholesalers and retailers.
- 253. Sale or service on premises of manufacturer or producer.
- 254. Agreements and franchises.
- 255. — In general.
- 256. — Duration, termination, and renewal.



**23H. ALCOHOLIC BEVERAGES****II. CONTROL AND REGULATION.(Cont'd)**

- 257. Ownership, control, and integration; financial interests.
- 258. Prices, discounts, and rebates.
- 259. Purpose and intent.
- 260. — In general.
- 261. — Scientific, industrial, medicinal, or sacramental purpose.

**6. TRANSPORTATION, SHIPPING, AND DELIVERY.**

- 271. In general.
- 272. Purpose and intent.
- 273. — In general.
- 274. — Scientific, industrial, medicinal, or sacramental purpose.

**7. INTERJURISDICTIONAL TRAFFIC; IMPORTS AND EXPORTS.**

- 281. In general.
- 282. Interstate traffic.
- 283. — In general.
- 284. — Mode or system of distribution; wholesalers and retailers.
- 285. Local option districts; “dry” areas.
- 286. Purpose and intent.
- 287. — In general.
- 288. — Scientific, industrial, medicinal, or sacramental purpose.

**8. REPRESENTATIONS, ASSERTIONS, AND DESCRIPTIONS.**

- 291. In general.
- 292. Advertising, marketing, and promotion.
- 293. Labeling and packaging.
- 294. Prices, representations concerning.

**9. PURCHASE.**

- 301. In general.
- 302. By underage persons.
- 303. By intoxicated or alcoholic persons.
- 304. Purchase for others.

**10. POSSESSION AND STORAGE.**

- 311. In general.
- 312. By underage persons.
- 313. Keeping for sale.

**11. CONSUMPTION AND USE.**

- 321. In general.
- 322. Right to consume or use alcohol.

**II. CONTROL AND REGULATION.(Cont'd)**

- 323. Consumption or use by underage persons.
- 324. Public consumption and intoxication.
- 325. Scientific, industrial, medicinal, or sacramental use.

**(F) LICENSES.****1. IN GENERAL.**

- 331. In general.
- 332. Power to issue licenses and regulate licensees.
- 333. Necessity of obtaining license.
- 334. Validity of license.
- 335. — In general.
- 336. — Collateral attack.
- 337. Form and requisites of license.
- 338. Agreements concerning license.
- 339. Bonds and other security.
- 340. — In general.
- 341. — Necessity and duty to give.
- 342. — Form, requisites, and sufficiency.
- 343. — Approval and filing.
- 344. — Breach of condition.
  - (1). In general.
  - (2). By agent or employee.
  - (3). Dealings with underage persons.
- 345. — Liabilities of sureties.
- 346. Activities and transactions without license or bond.

**2. ELIGIBILITY AND CRITERIA FOR ISSUANCE; GROUNDS, FACTORS, AND CONSIDERATIONS.**

- 351. In general.
- 352. Right to or interest in issuance of license in general.
- 353. Discretion of licensor in general.
- 354. Particular cases in general.
- 355. Public interest, convenience, necessity, or impact.
- 356. Public health, safety, or morals.
- 357. Compliance with law.
- 358. Products subject to license.
- 359. — In general.
- 360. — Beer, ale, and other malt beverages.
- 361. — Wine, cider, and fruit juices.
- 362. Nature of licensed activity.
- 363. — In general.

**23H. ALCOHOLIC BEVERAGES****II. CONTROL AND REGULATION.(Cont'd)**

- 364. — Manufacture and production.
- 365. — Distribution and mode thereof; re-tail or wholesale.
- 366. — Transportation and shipping.
- 367. — Sale or service for on-premises or off-premises consumption.
- 368. Nature and suitability of location or premises.
- 369. — In general.
- 370. — Space, seating, and parking.
- 371. — Proximity to public institutions, churches, and schools.
- 372. — Mobile providers; portable buildings.
- 373. Nature and conduct of applicant's operations.
- 374. — In general.
- 375. — Saloons and taverns in general.
- 376. — Food service; restaurants.
- 377. — Lodging; hotels and motels.
- 378. — Entertainment and amusement.
  - (1). In general.
  - (2). Dancing, nudity, and sexual conduct; adult entertainment.
- 379. — Grocery, drug, and convenience stores.
- 380. Nature of applicant.
- 381. — In general.
- 382. — Public employees or officials.
  - (1). In general.
  - (2). Law enforcement personnel.
- 383. — Physicians and other health care providers.
- 384. — Private clubs and associations.
- 385. — Veterans' organizations.
- 386. Suitability, fitness, or character of applicant.
- 387. — In general.
- 388. — Prior misconduct; criminal history.
- 389. Residence of applicant.
- 390. Applicant's relationships with others.
- 391. — In general.
- 392. — Ownership, control, and integration; financial interests.
- 393. — Chain stores.
- 394. Number of licenses; quotas and moratoria.
- 395. — In general.
- 396. — Number allowed in locale.

**II. CONTROL AND REGULATION.(Cont'd)**

- (1). In general.
- (2). Resort or tourist areas.
- 397. — Number allowed per licensee or premises.
- 3. SCOPE, OPERATION, AND EFFECT OF LICENSE.**
- 401. In general.
- 402. Rights conferred by license.
- 403. — In general.
- 404. — License as contract, property, or privilege.
- 405. Obligations and conditions imposed by license.
- 406. Agreements between licensors and licensees.
- 407. Display of license.
- 408. Duration and expiration of license.
- 409. Activities and transactions unauthorized by license.
- 410. — In general.
- 411. — Place unauthorized by license.
- 412. Licenses in multiple jurisdictions.
- 413. Federal licenses.

**4. RENEWAL.**

- 421. In general.
- 422. Grounds, factors, and considerations.
- 423. — In general.
- 424. — Right to or interest in renewal of license.
- 425. — Discretion of licensor.
- 426. Particular cases.

**5. TRANSFER.**

- 431. In general.
- 432. Grounds, factors, and considerations.
- 433. — In general.
- 434. — Right to or interest in transfer of license.
- 435. — Discretion of licensor.
- 436. Particular cases in general.
- 437. Transfer or alteration of licensee's business.
- 438. — In general.
- 439. — Change of location of business.
- 440. Agreements concerning transfer.
- 441. — In general.
- 442. — Approval.

**23H. ALCOHOLIC BEVERAGES****II. CONTROL AND REGULATION.(Cont'd)**

- 443. — Validity and enforceability.
- 444. — Construction, operation, performance, and breach.
- 445. Rights of creditors and other third parties.

**6. REVOCATION, SUSPENSION, OR OTHER DISCIPLINE.**

- 451. In general.
- 452. Grounds, factors, and considerations in general.
- 453. — In general.
- 454. — Misconduct in general.
- 455. — Violations of law in general.
- 456. — Violations of terms or conditions of license in general.
- 457. Particular cases, grounds, factors, or considerations.
- 458. — In general.
- 459. — Misconduct in licensing process.
  - (1). In general.
  - (2). Fraud or false statements.
- 460. — Nature, price, or quantity of licensee's products.
- 461. — Place or time of licensee's activities or transactions.
- 462. — Transactions with prohibited persons.
  - (1). In general.
  - (2). Underage persons.
- 463. — Nuisance or disorderly premises in general.
- 464. — Amusement and entertainment activities.
  - (1). In general.
  - (2). Dancing, nudity, and sexual conduct; adult entertainment.
  - (3). Gaming and lotteries.
- 465. — Employment of prohibited persons.
  - (1). In general.
  - (2). Underage persons.
- 466. — Admittance of prohibited persons.
  - (1). In general.
  - (2). Underage persons.
  - (3). Intoxicated or alcoholic persons.
- 467. — Maintaining screens and other obstructions of view.
- 468. — Hours of operation.

**II. CONTROL AND REGULATION.(Cont'd)**

- 469. — Bookkeeping and recordkeeping.
- 470. Conduct of licensee's employees or agents; strict liability.
- 471. Conditions precedent.
- 472. Effect of subsequent legislation.
- 473. Propriety of sanction or penalty imposed.
- 474. — In general.
- 475. — Monetary sanctions or penalties.
- 476. — Past record; prior discipline.
- 477. Operation and effect.

**(G) FEES AND TAXES.**

- 481. In general.
- 482. Subjects and liability in general.
- 483. License fees and taxes.
- 484. — In general.
- 485. — Renewal.
- 486. — Transfer.
- 487. Amount.
- 488. Levy and assessment.
- 489. Lien on property.
- 490. Payment and collection.
- 491. Disposition of moneys collected.
- 492. Refund, recovery, or rebate.

**(H) INVESTIGATIONS AND EXAMINATIONS.**

- 501. In general.
- 502. Undercover, decoy, or "sting" operations.
- 503. Subpoenas.
- 504. Judicial review or enforcement.

**(I) GOVERNMENT OWNERSHIP OR OPERATION OF STORES; PUBLIC DISPENSARIES.**

- 511. In general.
- 512. State ownership or operation.
- 513. Local ownership or operation.
- 514. Officers, employees, and agents.
- 515. Contracts.

**(J) PROCEEDINGS CONCERNING CONTROL AND REGULATION.****1. IN GENERAL.**

- 521. In general.
- 522. License proceedings in general.
- 523. Renewal proceedings in general.
- 524. Transfer proceedings in general.

**23H. ALCOHOLIC BEVERAGES****II. CONTROL AND REGULATION.(Cont'd)**

- 525. Proceedings concerning violations and discipline in general.
- 526. Jurisdiction and venue.
- 527. — In general.
- 528. — License proceedings in general.
- 529. — Renewal proceedings.
- 530. — Transfer proceedings.
- 531. — Proceedings concerning violations and discipline.
- 532. Time for proceedings; limitations and laches.
- 533. — In general.
- 534. — License proceedings in general.
- 535. — Renewal proceedings.
- 536. — Transfer proceedings.
- 537. — Proceedings concerning violations and discipline.
- 538. Parties.
- 539. — In general.
- 540. — License proceedings in general.
- 541. — Renewal proceedings.
- 542. — Transfer proceedings.
- 543. — Proceedings concerning violations and discipline.
- 544. Process or other notice; appearance.
- 545. — In general.
- 546. — License proceedings in general.
- 547. — Renewal proceedings.
- 548. — Transfer proceedings.
- 549. — Proceedings concerning violations and discipline.
- 550. Applications, petitions, and pleadings.
- 551. — In general.
- 552. — License proceedings in general.
  - (1). In general.
  - (2). Form and requisites of application.
  - (3). Assent to or recommendation of application.
  - (4). Remonstrances.
- 553. — Renewal proceedings.
- 554. — Transfer proceedings.
- 555. — Proceedings concerning violations and discipline.
- 556. Adjournment or stay.
- 557. Discontinuance or dismissal.
- 558. Expiration of license before hearing.
- 559. Costs and fees.

**2. EVIDENCE.**

- 561. In general.
- 562. Presumptions, inferences, and burden of proof.
- 563. — In general.
- 564. — License proceedings in general.
- 565. — Renewal proceedings.
- 566. — Transfer proceedings.
- 567. — Proceedings concerning violations and discipline.
- 568. Admissibility.
- 569. — In general.
- 570. — License proceedings in general.
- 571. — Renewal proceedings.
- 572. — Transfer proceedings.
- 573. — Proceedings concerning violations and discipline.
- 574. Degree of proof.
- 575. — In general.
- 576. — License proceedings in general.
- 577. — Renewal proceedings.
- 578. — Transfer proceedings.
- 579. — Proceedings concerning violations and discipline.
- 580. Weight and sufficiency.
- 581. — In general.
- 582. — License proceedings in general.
- 583. — Renewal proceedings.
- 584. — Transfer proceedings.
- 585. — Proceedings concerning violations and discipline.

**3. TRIAL OR HEARING.**

- 591. In general.
- 592. Necessity; right to trial or hearing.
- 593. — In general.
- 594. — License proceedings in general.
- 595. — Renewal proceedings.
- 596. — Transfer proceedings.
- 597. — Proceedings concerning violations and discipline.
- 598. Time for trial or hearing; continuance.
- 599. Judge or other decisionmaker.
- 600. — In general.
- 601. — Bias, prejudice, or other disqualification.
  - (1). In general.
  - (2). License proceedings in general.
  - (3). Renewal proceedings.

**23H. ALCOHOLIC BEVERAGES****II. CONTROL AND REGULATION.(Cont'd)**

- (4). Transfer proceedings.
- (5). Proceedings concerning violations and discipline.
- 602. — Reference.
- 603. Counsel.
- 604. Questions of law or fact.
- 605. Instructions.
- 606. Findings and conclusions.
- 607. — In general.
- 608. — License proceedings in general.
- 609. — Renewal proceedings.
- 610. — Transfer proceedings.
- 611. — Proceedings concerning violations and discipline.
- 612. Rehearing or new trial.

**4. JUDGMENT, ORDER, OR OTHER DISPOSITION.**

- 621. In general.
- 622. Time for disposition.
- 623. Default.
- 624. Amendment, correction, or modification.
- 625. Opening or vacating; reconsideration.
- 626. Conclusiveness.

**5. FURTHER ADMINISTRATIVE REVIEW.**

- 631. In general.
- 632. License proceedings in general.
- 633. Renewal proceedings.
- 634. Transfer proceedings.
- 635. Proceedings concerning violations and discipline.

**6. JUDICIAL REVIEW.**

- 641. In general.
- 642. Nature and form of remedy.
- 643. — In general.
- 644. — Injunction concerning issuance of license.
- 645. — Mandamus concerning issuance of license.
- 646. — Certiorari to review license proceedings.
- 647. Decisions reviewable.
- 648. — In general.
- 649. — Finality; interlocutory review.
- 650. — Prematurity; ripeness.
- 651. — Mootness.

**II. CONTROL AND REGULATION.(Cont'd)**

- 652. — Exhaustion of administrative remedies.
- 653. Persons entitled to seek review; parties; standing.
- 654. Time for review.
- 655. Petition or other application for review.
- 656. Preservation of error; waiver and estoppel; record.
- 657. Proceedings on review; hearing.
- 658. — In general.
- 659. — Supersedeas or stay.
- 660. Scope, standard, and extent of review.
- 661. — In general.
- 662. — License proceedings in general.
  - (1). In general.
  - (2). Discretion of decisionmaker below.
  - (3). Evidence and findings below.
  - (4). De novo review.
- 663. — Renewal proceedings.
- 664. — Transfer proceedings.
- 665. — Proceedings concerning violations and discipline.
  - (1). In general.
  - (2). Discretion of decisionmaker below.
  - (3). Evidence and findings below.
  - (4). De novo review.
- 666. Presumptions and burden of showing error.
- 667. — In general.
- 668. — License proceedings in general.
- 669. — Renewal proceedings.
- 670. — Transfer proceedings.
- 671. — Proceedings concerning violations and discipline.
- 672. Harmless and reversible error.
- 673. — In general.
- 674. — License proceedings in general.
- 675. — Renewal proceedings.
- 676. — Transfer proceedings.
- 677. — Proceedings concerning violations and discipline.
- 678. Determination and disposition.
- 679. — In general.
- 680. — Modification.
- 681. — Remand and proceedings thereon.
- 682. Further judicial review.

**23H. ALCOHOLIC BEVERAGES****7. ACTIONS.**

- 691. In general.
- 692. Parties, pleading, and evidence.
- 693. Trial and judgment.
- 694. Actions for fines or penalties.
- 695. — In general.
- 696. — Nature and form of remedy.
- 697. — Grounds of action.
- 698. — Defenses.
- 699. — Persons entitled to sue.
- 700. — Persons liable.
- 701. — Jurisdiction and venue.
- 702. — Time to sue and limitations.
- 703. — Parties.
- 704. — Process and appearance.
- 705. — Pleading.
- 706. — Evidence.
- 707. — Amount recoverable.
- 708. — Trial.
- 709. — Judgment and review.
- 710. — Costs and fees.
- 711. — Disposition of fines or penalties recovered.
- 712. Actions on bonds or other security for license.
- 713. — In general.
- 714. — Persons entitled to sue.
- 715. — Pleading.
- 716. — Evidence.
- 717. — Trial and judgment.

**(K) CRIMINAL LIABILITY AND PROCEEDINGS.****1. IN GENERAL.**

- 721. In general.
- 722. Constitutional and statutory provisions.
- 723. — In general.
- 724. — Purpose and construction in general.
- 725. — Validity.
- 726. — Amendment and repeal.
- 727. — Retroactivity.
- 728. Administrative regulations and local ordinances.
- 729. Persons liable.
- 730. — In general.
- 731. — Principal's liability for acts of agent or employee.
- 732. — Agents or employees.
- 733. — Spouses.

**II. CONTROL AND REGULATION.(Cont'd)**

- 734. — Partners.
  - 735. — Clubs or associations.
  - 736. Different offenses in same transaction.
  - 737. Continuing or separate offenses.
  - 738. Persons entitled to prosecute.
  - 739. Defenses.
  - 740. Jurisdiction.
  - 741. Preliminary proceedings.
  - 742. Trial in general.
  - 743. Verdict and findings.
- 2. INDICTMENT, INFORMATION, OR COMPLAINT.**
- 751. In general.
  - 752. Particular offenses.
  - 753. — In general.
  - 754. — Prohibition in general.
  - 755. — Sale or traffic in general.
    - (1). In general.
    - (2). Place of activity or transaction.
    - (3). — In general.
    - (4). — Local option districts; "dry" areas.
    - (5). Time of activity or transaction.
    - (6). Price or quantity.
    - (7). Physicians and other health care providers.
  - 756. — Transactions with prohibited persons.
    - (1). In general.
    - (2). Underage persons or students.
    - (3). Intoxicated or alcoholic persons.
  - 757. — Nature and conduct of business.
    - (1). In general.
    - (2). Keeping place for unlawful sale or liquor nuisance.
    - (3). Allowing disorderly premises.
  - 758. — Manufacture and production.
  - 759. — Distribution.
  - 760. — Transportation and shipping.
  - 761. — Purchase.
    - (1). In general.
    - (2). By underage persons or students.
    - (3). By intoxicated or alcoholic persons.
  - 762. — Possession and storage.
    - (1). In general.
    - (2). By underage persons or students.
    - (3). Keeping for sale.

**23H. ALCOHOLIC BEVERAGES****II. CONTROL AND REGULATION.(Cont'd)**

763. — Consumption and use.  
     (1). In general.  
     (2). By underage persons or students.  
     (3). Public consumption or intoxication.
764. License or authority.
765. Matters of defense.
766. Variance between allegations and proof.

**3. PRESUMPTIONS AND BURDEN OF PROOF.**

771. In general.
772. Particular offenses.
773. — In general.
774. — Prohibition in general.
775. — Sale or traffic in general.  
     (1). In general.  
     (2). Place of activity or transaction.  
     (3). — In general.  
     (4). — Local option districts; “dry” areas.  
     (5). Time of activity or transaction.  
     (6). Price or quantity.  
     (7). Physicians and other health care providers.
776. — Transactions with prohibited persons.  
     (1). In general.  
     (2). Underage persons or students.  
     (3). Intoxicated or alcoholic persons.
777. — Nature and conduct of business.  
     (1). In general.  
     (2). Keeping place for unlawful sale or liquor nuisance.  
     (3). Allowing disorderly premises.
778. — Manufacture and production.
779. — Distribution.
780. — Transportation and shipping.
781. — Purchase.  
     (1). In general.  
     (2). By underage persons or students.  
     (3). By intoxicated or alcoholic persons.
782. — Possession and storage.  
     (1). In general.  
     (2). By underage persons or students.  
     (3). Keeping for sale.
783. — Consumption and use.  
     (1). In general.

**II. CONTROL AND REGULATION.(Cont'd)**

- (2). By underage persons or students.  
     (3). Public consumption or intoxication.
784. License or authority.
785. Matters of defense.

**4. ADMISSIBILITY OF EVIDENCE.**

791. In general.
792. Particular offenses.
793. — In general.
794. — Prohibition in general.
795. — Sale or traffic in general.  
     (1). In general.  
     (2). Place of activity or transaction.  
     (3). — In general.  
     (4). — Local option districts; “dry” areas.  
     (5). Time of activity or transaction.  
     (6). Price or quantity.  
     (7). Physicians and other health care providers.
796. — Transactions with prohibited persons.  
     (1). In general.  
     (2). Underage persons or students.  
     (3). Intoxicated or alcoholic persons.
797. — Nature and conduct of business.  
     (1). In general.  
     (2). Keeping place for unlawful sale or liquor nuisance.  
     (3). Allowing disorderly premises.
798. — Manufacture and production.
799. — Distribution.
800. — Transportation and shipping.
801. — Purchase.  
     (1). In general.  
     (2). By underage persons or students.  
     (3). By intoxicated or alcoholic persons.
802. — Possession and storage.  
     (1). In general.  
     (2). By underage persons or students.  
     (3). Keeping for sale.
803. — Consumption and use.  
     (1). In general.  
     (2). By underage persons or students.  
     (3). Public consumption or intoxication.

**23H. ALCOHOLIC BEVERAGES****II. CONTROL AND REGULATION.(Cont'd)**

- 804. License or authority.
- 805. Matters of defense.

**5. WEIGHT AND SUFFICIENCY OF EVIDENCE.**

- 811. In general.
- 812. Particular offenses.
- 813. — In general.
- 814. — Prohibition in general.
- 815. — Sale or traffic in general.
  - (1). In general.
  - (2). Place of activity or transaction.
  - (3). — In general.
  - (4). — Local option districts; “dry” areas.
  - (5). Time of activity or transaction.
  - (6). Price or quantity.
  - (7). Physicians and other health care providers.
- 816. — Transactions with prohibited persons.
  - (1). In general.
  - (2). Underage persons or students.
  - (3). Intoxicated or alcoholic persons.
- 817. — Nature and conduct of business.
  - (1). In general.
  - (2). Keeping place for unlawful sale or liquor nuisance.
  - (3). Allowing disorderly premises.
- 818. — Manufacture and production.
- 819. — Distribution.
- 820. — Transportation and shipping.
- 821. — Purchase.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). By intoxicated or alcoholic persons.
- 822. — Possession and storage.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). Keeping for sale.
- 823. — Consumption and use.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). Public consumption or intoxication.
- 824. License or authority.
- 825. Matters of defense.

**6. QUESTIONS OF LAW OR FACT.**

- 831. In general.
- 832. Particular offenses.
- 833. — In general.
- 834. — Prohibition in general.
- 835. — Sale or traffic in general.
  - (1). In general.
  - (2). Place of activity or transaction.
  - (3). — In general.
  - (4). — Local option districts; “dry” areas.
  - (5). Time of activity or transaction.
  - (6). Price or quantity.
  - (7). Physicians and other health care providers.
- 836. — Transactions with prohibited persons.
  - (1). In general.
  - (2). Underage persons or students.
  - (3). Intoxicated or alcoholic persons.
- 837. — Nature and conduct of business.
  - (1). In general.
  - (2). Keeping place for unlawful sale or liquor nuisance.
  - (3). Allowing disorderly premises.
- 838. — Manufacture and production.
- 839. — Distribution.
- 840. — Transportation and shipping.
- 841. — Purchase.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). By intoxicated or alcoholic persons.
- 842. — Possession and storage.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). Keeping for sale.
- 843. — Consumption and use.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). Public consumption or intoxication.
- 844. License or authority.
- 845. Matters of defense.

**7. INSTRUCTIONS.**

- 851. In general.
- 852. Particular offenses.
- 853. — In general.



**23H. ALCOHOLIC BEVERAGES****II. CONTROL AND REGULATION.(Cont'd)**

- 854. — Prohibition in general.
- 855. — Sale or traffic in general.
  - (1). In general.
  - (2). Place of activity or transaction.
  - (3). — In general.
  - (4). — Local option districts; “dry” areas.
  - (5). Time of activity or transaction.
  - (6). Price or quantity.
  - (7). Physicians and other health care providers.
- 856. — Transactions with prohibited persons.
  - (1). In general.
  - (2). Underage persons or students.
  - (3). Intoxicated or alcoholic persons.
- 857. — Nature and conduct of business.
  - (1). In general.
  - (2). Keeping place for unlawful sale or liquor nuisance.
  - (3). Allowing disorderly premises.
- 858. — Manufacture and production.
- 859. — Distribution.
- 860. — Transportation and shipping.
- 861. — Purchase.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). By intoxicated or alcoholic persons.
- 862. — Possession and storage.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). Keeping for sale.
- 863. — Consumption and use.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). Public consumption or intoxication.
- 864. License or authority.
- 865. Matters of defense.

**8. SENTENCE AND PUNISHMENT.**

- 871. In general.
- 872. Particular offenses.
- 873. — In general.
- 874. — Prohibition in general.
- 875. — Sale or traffic in general.
  - (1). In general.

**II. CONTROL AND REGULATION.(Cont'd)**

- (2). Place of activity or transaction.
- (3). — In general.
- (4). — Local option districts; “dry” areas.
- (5). Time of activity or transaction.
- (6). Price or quantity.
- (7). Physicians and other health care providers.
- 876. — Transactions with prohibited persons.
  - (1). In general.
  - (2). Underage persons or students.
  - (3). Intoxicated or alcoholic persons.
- 877. — Nature and conduct of business.
  - (1). In general.
  - (2). Keeping place for unlawful sale or liquor nuisance.
  - (3). Allowing disorderly premises.
- 878. — Manufacture and production.
- 879. — Distribution.
- 880. — Transportation and shipping.
- 881. — Purchase.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). By intoxicated or alcoholic persons.
- 882. — Possession and storage.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). Keeping for sale.
- 883. — Consumption and use.
  - (1). In general.
  - (2). By underage persons or students.
  - (3). Public consumption or intoxication.
- 884. Requiring security from person convicted.
- 885. Lien of fine or costs on premises used.

**III. PROPERTY AND CONTRACT RIGHTS.**

- 891. In general.
- 892. Validity of conveyances and contracts.
- 893. — In general.
- 894. — Sales in general.
- 895. — Effect of place of transaction.
- 896. — Unlicensed transactions.
- 897. — Transactions involving credit and security therefor.

**23H. ALCOHOLIC BEVERAGES****III. PROPERTY AND CONTRACT RIGHTS.(Cont'd)**

- 898. — Other particular transactions.
- 899. Recovery of possession or value.
- 900. Recovery of price of liquor sold.
- 901. — In general.
- 902. — Actions.
- 903. Recovery of payment for liquor purchased.
- 904. Recovery of damages.

**IV. SEARCHES AND SEIZURES.**

- 911. In general.
- 912. Constitutional and statutory provisions.
- 913. — In general.
- 914. — Purpose and construction in general.
- 915. — Validity.
- 916. — Amendment and repeal.
- 917. — Retroactivity.
- 918. Administrative regulations and local ordinances.
- 919. Persons, places, and things subject to or protected from search or seizure.
- 920. — In general.
- 921. — Expectation of privacy.
- 922. Grounds for and validity of search or seizure.
- 923. — In general.
- 924. — Necessity of warrant; warrantless searches and seizures in general.
- 925. — Particular cases.
- 926. Scope, conduct, and duration of search or seizure.
- 927. Proceedings to authorize; search warrants.
- 928. — In general.
- 929. — Affidavits, complaints, and evidence.
- 930. — Form, requisites, and sufficiency of warrant.
- 931. — Execution and return of warrant.
- 932. Disposition of property seized.
- 933. Liability for wrongful search or seizure.

**V. ABATEMENT AND INJUNCTION.****(A) IN GENERAL.**

- 941. In general.
- 942. Constitutional and statutory provisions.

**V. ABATEMENT AND INJUNCTION.(Cont'd)**

- 943. — In general.
- 944. — Purpose and construction in general.
- 945. — Validity.
- 946. — Amendment and repeal.
- 947. — Retroactivity.
- 948. Administrative regulations and local ordinances.
- 949. Nuisance or business subject to abatement or injunction.
- 950. Grounds for abatement or injunction.
- 951. Defenses.
- 952. Discontinuance of nuisance or bond therefor pending suit.

**(B) ACTIONS AND PROCEEDINGS.**

- 961. In general.
- 962. Persons entitled to maintain proceedings.
- 963. Persons against whom proceedings may be brought.
- 964. Summary proceedings.
- 965. Jurisdiction and venue.
- 966. Parties.
- 967. Process and appearance.
- 968. Preliminary or temporary injunction.
- 969. Pleading.
- 970. Evidence.
- 971. Trial or hearing.
- 972. Relief awarded.
- 973. Judgment and enforcement thereof.
- 974. — In general.
- 975. — Violation of injunction, and punishment thereof.
- 976. Costs and fees.

**VI. CIVIL LIABILITY FOR PROVIDING ALCOHOL; DRAM-SHOP LAWS.****(A) IN GENERAL.**

- 1001. In general.
- 1002. Constitutional and statutory provisions.
- 1003. — In general.
- 1004. — Purpose and construction in general.
- 1005. — Validity.
- 1006. — Amendment and repeal.
- 1007. — Retroactivity.

**23H. ALCOHOLIC BEVERAGES****VI. CIVIL LIABILITY FOR PROVIDING  
ALCOHOL; DRAM-SHOP  
LAWS.(Cont'd)**

- 1008. Administrative regulations and local ordinances.
- 1009. Concurrent and conflicting laws and remedies.

**(B) GROUNDS AND ELEMENTS.**

- 1021. In general.
- 1022. Necessity and existence of duty in general.
- 1023. — In general.
- 1024. — Duty to consumer.
- 1025. — Duty to third persons.
- 1026. Standard of care and breach of duty in general.
- 1027. Mode or manner of providing alcohol.
- 1028. — In general.
- 1029. — Sale or other commercial provision.
- 1030. — Gift.
- 1031. Mode or manner of consumption.
- 1032. — In general.
- 1033. — On-premises or off-premises.
- 1034. Nature or condition of consumer.
- 1035. — In general.
- 1036. — Intoxicated or alcoholic consumers.
- 1037. — Underage consumers.
- 1038. Knowledge or intent of provider.
- 1039. — In general.
- 1040. — As to intoxicated or alcoholic consumers.
- 1041. — As to underage consumers.
- 1042. Necessity and nature of injury or damage.
- 1043. — In general.
- 1044. — Personal injury.
- 1045. — Property damage.
- 1046. — Injuries to means of support.
- 1047. Foreseeability and causation.
- 1048. — In general.
- 1049. — Substantial, reasonable, or practical connection.
- 1050. — Legal or proximate cause.
- 1051. — Concurring, intervening, or superseding cause.
- 1052. — Injured person's conduct or fault as cause.

**VI. CIVIL LIABILITY FOR PROVIDING  
ALCOHOL; DRAM-SHOP  
LAWS.(Cont'd)**

- 1053. Liability premised on regulatory or criminal violations; negligence per se.
- 1054. — In general.
- 1055. — Illegal or unlawful provision in general.
- 1056. — Unlawful provision of alcohol to intoxicated or alcoholic persons.
- 1057. — Unlawful provision of alcohol to underage persons.
- 1058. — Foreseeability and causation.
- 1059. Violation of dram-shop law as negligence per se.

**(C) PERSONS PROTECTED AND ENTITLED TO SUE.**

- 1071. In general.
- 1072. Purchasers and consumers.

**(D) PERSONS LIABLE.**

- 1081. In general.
- 1082. Vicarious liability and respondeat superior.
- 1083. Joint and several liability.
- 1084. In-concert liability.
- 1085. Sureties on dealer's bond.
- 1086. Owners or lessors of premises.

**(E) NON-COMMERCIAL PROVIDERS;  
SOCIAL HOSTS.**

- 1091. In general.
- 1092. Particular non-commercial providers or hosts.
- 1093. — In general.
- 1094. — Parents, grandparents, and other relatives.
- 1095. — Persons in loco parentis.
- 1096. — Underage providers or hosts.
- 1097. — Schools, colleges, and universities.
- 1098. — Employers and unions.
- 1099. Nature or condition of consumer.
- 1100. — In general.
- 1101. — Intoxicated or alcoholic consumers.
- 1102. — Underage consumers.
- 1103. Knowledge or intent of provider or host.
- 1104. — In general.

**23H. ALCOHOLIC BEVERAGES****VI. CIVIL LIABILITY FOR PROVIDING  
ALCOHOL; DRAM-SHOP  
LAWS.(Cont'd)**

- 1105. — As to intoxicated or alcoholic consumers.
- 1106. — As to underage consumers.
- 1107. Necessity and nature of injury or damage.
- 1108. Foreseeability and causation.
- 1109. Liability premised on regulatory or criminal violations; negligence per se.
- 1110. Persons liable.

**(F) DEFENSES AND MITIGATING CIRCUMSTANCES.**

- 1121. In general.
- 1122. Conduct or fault of injured person.
- 1123. — In general.
- 1124. — Contributory act or negligence.
- 1125. — Comparative negligence.
- 1126. — Intentional or criminal conduct; violations of law.
- 1127. — Provocation.
- 1128. — Participation or complicity.
- 1129. — Assumption of risk.
- 1130. — Professional rescuers; “firefighter’s rule”.
- 1131. — Injury avoidable notwithstanding injured person’s conduct or fault; last clear chance.
- 1132. Conduct or fault of third persons.
- 1133. License or authority.
- 1134. Release or discharge.
- 1135. Safe harbor.
- 1136. Immunity.

**(G) ACTIONS AND PROCEEDINGS.****1. IN GENERAL.**

- 1151. In general.
- 1152. Nature, form, and right of action.
- 1153. — In general.
- 1154. — Non-commercial providers; social hosts.
- 1155. Notice of claim.
- 1156. Time to sue; limitations and laches.
- 1157. Parties.

**2. PLEADING.**

- 1161. In general.
- 1162. Particular cases in general.

**VI. CIVIL LIABILITY FOR PROVIDING  
ALCOHOL; DRAM-SHOP  
LAWS.(Cont'd)**

- 1163. Non-commercial providers; social hosts.
- 1164. Affidavits of merit.

**3. EVIDENCE.**

- 1171. In general.
- 1172. Presumptions, inferences, and burden of proof.
- 1173. — In general.
- 1174. — Non-commercial providers; social hosts.
- 1175. — Defenses and mitigating circumstances.
- 1176. Admissibility.
- 1177. Degree of proof.
- 1178. Weight and sufficiency.
- 1179. — In general.
- 1180. — Non-commercial providers; social hosts.
- 1181. — Defenses and mitigating circumstances.

**4. TRIAL.**

- 1191. In general.
- 1192. Questions of law or fact.
- 1193. — In general.
- 1194. — Non-commercial providers; social hosts.
- 1195. — Defenses and mitigating circumstances.
- 1196. Instructions.
- 1197. — In general.
- 1198. — Non-commercial providers; social hosts.
- 1199. — Defenses and mitigating circumstances.
- 1200. Verdict and findings.

**5. JUDGMENT AND RELIEF.**

- 1211. In general.
- 1212. Damages.
- 1213. — In general.
- 1214. — Measure and amount.
- 1215. — Punitive or exemplary damages.
- 1216. Lien on premises used.
- 1217. Costs and fees.

**24. ALIENS, IMMIGRATION, AND CITIZENSHIP****24. ALIENS, IMMIGRATION,  
AND CITIZENSHIP****SUBJECTS INCLUDED**

Persons of foreign allegiance; their rights and disabilities in general

Exclusion or denial of admission and deportation or removal from the country

Regulation and restriction of immigration

Detention and supervision

Asylum and refugees

Nature and incidents of citizenship

Rights, privileges, and immunities of citizens in general, as distinguished from mere residents or aliens

Expatriation

Naturalization and admission to citizenship

Denaturalization

Alien tort claims

Crimes and offenses specifically concerning aliens or immigration

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Admission to citizenship of specific classes of persons, see **INDIANS, HUMAN TRAFFICKING AND SLAVERY V**

Alien enemies, see **WAR AND NATIONAL EMERGENCY**

Courts, citizenship affecting jurisdiction, see **COURTS, FEDERAL COURTS**

Domicile, application of law of, see titles of particular subjects involved

Escheat proceedings, see **ABANDONED AND LOST PROPERTY II**

Federal courts, jurisdiction and venue, see **FEDERAL COURTS**

Particular kinds of property or particular remedies, rights and liabilities in respect of, see **MINES AND MINERALS, SHIPPING, PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY, TRADEMARKS** and other specific topics

Particular civil or political rights, see **CIVIL RIGHTS, CONSTITUTIONAL LAW, ELECTION LAW**

Privileges and immunities of citizens of each state in other states, see **CONSTITUTIONAL LAW XXIV**

Workers' compensation acts, rights under, see **WORKERS' COMPENSATION**

Wrongful death, right of action for, see **DEATH**

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- II. **STATUS, RIGHTS, PRIVILEGES, DUTIES, AND DISABILITIES**, ¶110–139.
- III. **IMMIGRATION AGENCIES AND OFFICERS**, ¶140–159.
- IV. **ADMISSION AND VISAS IN GENERAL**, ¶160–209.
- (A) **IN GENERAL**, ¶160–169.
- (B) **VISAS IN GENERAL**, ¶170–173.
- (C) **IMMIGRANT VISAS**, ¶174–189.
- (D) **NON-IMMIGRANT VISAS**, ¶190–199.
- (E) **REVOCATION OR EXPIRATION OF VISAS**, ¶200–204.
- (F) **VISA PROCEEDINGS**, ¶205–209.
- V. **DENIAL OF ADMISSION AND REMOVAL**, ¶210–434.
- (A) **IN GENERAL**, ¶210–223.
- (B) **GROUND FOR DENIAL OF ADMISSION OR EXCLUSION**, ¶224–248.
- (C) **REMOVAL OR DEPORTATION; GROUNDS**, ¶249–298.
- (D) **RELIEF FROM DENIAL OF ADMISSION OR REMOVAL IN GENERAL**, ¶299–328.
- (E) **ADMINISTRATIVE PROCEDURE**, ¶329–368.
- (F) **ORDER AND WARRANT; ENFORCEMENT**, ¶369–383.
- (G) **JUDICIAL REVIEW OR INTERVENTION**, ¶384–419.
- (H) **EVIDENCE IN ADMINISTRATIVE OR JUDICIAL PROCEEDINGS**, ¶420–434.
- VI. **ARREST, DETENTION, SUPERVISION, AND PAROLE**, ¶435–489.
- (A) **IN GENERAL**, ¶435–439.
- (B) **BORDER STOPS AND INSPECTIONS**, ¶440–449.
- (C) **ARREST**, ¶450–459.
- (D) **DETENTION, SUPERVISION, AND PAROLE**, ¶460–484.
- (E) **JUDICIAL REVIEW OR INTERVENTION**, ¶485–489.
- VII. **ASYLUM, REFUGEES, AND WITHHOLDING OF REMOVAL**, ¶490–649.
- (A) **IN GENERAL**, ¶490–499.
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**24. ALIENS, IMMIGRATION, AND CITIZENSHIP**

- VII. ASYLUM, REFUGEES, AND WITH-  
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- (C) ELIGIBILITY; REFUGEE STATUS,  
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- IX. ALIEN TORT CLAIMS, ⌘760–768.
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**I. ALIENS IN GENERAL.**

100. In general.
101. Power to regulate in general.
102. Constitutional and statutory provisions.
103. Preemption.
104. Who are aliens.
105. Evidence of alienage.
106. — In general.
107. — Presumptions and burden of proof.
108. — Admissibility.
109. — Weight and sufficiency.

**II. STATUS, RIGHTS, PRIVILEGES,  
DUTIES, AND DISABILITIES.**

110. In general.
111. Constitutional and statutory provisions.
112. — In general.
113. — Purpose.
114. — Validity.
115. — Retroactive operation.
116. Status and classification of aliens in gen-  
    eral.
117. Subject to law; duties in general.
118. Registration.
119. Rights of aliens in general.
120. — In general.
121. — Undocumented aliens.
122. Employment.
123. — In general.
124. — Eligibility verification; document  
    abuse.

**II. STATUS, RIGHTS, PRIVILEGES, DUTIES,  
AND DISABILITIES.(Cont'd)**

125. Engaging in business or profession.
126. Education.
127. Contracts.
128. Property.
129. — In general.
130. — Personal property.
- (1). In general.
- (2). Inheritance or testamentary dispo-  
        sition.
- (3). Effect of treaties and reciprocal  
        rights.
131. — Real property.
- (1). In general.
- (2). Who may question capacity.
- (3). Purchase or sale.
- (4). Lease.
- (5). Mortgage or lien.
- (6). Trusts.
- (7). Dower or curtesy.
- (8). Inheritance or testamentary dispo-  
        sition.
- (9). Grants from state.
- (10). Escheat.
- (11). Effect of treaties and reciprocal  
        rights.
132. Right to actions by or against aliens.
133. — In general.
134. — Jurisdiction.
135. — Effect of treaties and reciprocal  
        rights.
136. Criminal prosecutions.
137. Costs of undocumented aliens; reim-  
    bursement to states.

**III. IMMIGRATION AGENCIES  
AND OFFICERS.**

140. In general.
141. Constitutional and statutory provisions.
142. Powers and duties in general.
143. Proceedings in general.
144. Officers and agents.
145. — In general.
146. — Appointment and qualification.
147. — Powers and duties.
148. — Compensation and expenses.
149. — Liabilities; immunity.

*Liability for constitutional violations, see UNITED  
STATES V(D)2.*

**24. ALIENS, IMMIGRATION, AND CITIZENSHIP****III. IMMIGRATION AGENCIES  
AND OFFICERS.(Cont'd)**

- 150. — Discipline and removal.
- 151. — Proceedings.
- 152. Rules and regulations.
- 153. — In general.
- 154. — Validity.
- 155. — Proceedings for adoption and review.

**IV. ADMISSION AND VISAS IN GENERAL.****(A) IN GENERAL.**

- 160. In general.
- 161. Constitutional and statutory provisions.
- 162. Admission as privilege or right.
- 163. Conditions in general.
- 164. Limitations on numbers in general.

**(B) VISAS IN GENERAL.**

- 170. In general.
- 171. Necessity.
- 172. Waiver.

**(C) IMMIGRANT VISAS.**

- 174. In general.
- 175. Allocation and preferences.
- 176. — In general.
- 177. — Family sponsored preferences.
- 178. — Employment related preferences.
  - (1). In general.
  - (2). Agricultural workers.
  - (3). Aliens with extraordinary abilities.
  - (4). Professionals and aliens with advanced degrees.
  - (5). Labor certification.
  - (6). Investors; employment creation.
- 179. — Special immigrants.
- 180. — Diversity.
- 181. Non-quota immigrants.
- 182. — In general.
- 183. — Immediate relatives.
- 184. — Permanent residents returning from temporary visit abroad.

**(D) NON-IMMIGRANT VISAS.**

- 190. In general.
- 191. Treaty traders and investors.
- 192. Visitors.

**IV. ADMISSION AND VISAS  
IN GENERAL.(Cont'd)**

- 193. Students.
- 194. Temporary workers.

**(E) REVOCATION OR EXPIRATION OF VISAS.**

- 200. In general.
- 201. Grounds for revocation.

**(F) VISA PROCEEDINGS.**

- 205. In general.
- 206. Evidence and fact questions.
- 207. Judicial review and intervention.

**V. DENIAL OF ADMISSION AND REMOVAL.****(A) IN GENERAL.**

- 210. In general.
- 211. Power to deny admission or remove in general.
- 212. Constitutional and statutory provisions.
- 213. — In general.
- 214. — Purpose.
- 215. — Validity.
- 216. — Retroactive operation.
- 217. Preemption.
- 218. Distinction between denial of admission or exclusion and removal or deportation.
- 219. — In general.
- 220. — Mode and effect of entry or reentry.

**(B) GROUNDS FOR DENIAL OF ADMISSION  
OR EXCLUSION.**

- 224. In general.
- 225. Health-related grounds.
- 226. Ineligibility for citizenship.
- 227. Draft evasion.
- 228. Liable to become public charge.
- 229. Employment or work-related grounds.
- 230. Seamen and similar transients.
- 231. Crime and related grounds.
- 232. — In general.
- 233. — Crimes of moral turpitude.
- 234. — Controlled substances offenses.
- 235. — Prostitution and immoral purposes.
- 236. Immigration violations.
- 237. — In general.
- 238. — Marriage fraud.

**24. ALIENS, IMMIGRATION, AND CITIZENSHIP****V. DENIAL OF ADMISSION AND  
REMOVAL.(Cont'd)**

- 239. — Previous removal and unlawful presence.
- 240. — Invalid reentry of permanent residents.
- 241. Security and related grounds.
- 242. — In general.
- 243. — Terrorist activity.
- 244. — Foreign policy concerns.
- 245. Assisting in persecution or genocide.
- 246. Defenses.

**(C) REMOVAL OR DEPORTATION; GROUNDS.**

- 249. In general.
- 250. Removal or deportation not punishment.
- 251. Necessity of entry; mode.
- 252. — In general.
- 253. — Reentry or new entry.
- 254. Inadmissible at time of entry, reentry, or adjustment of status.
- 255. Unlawful entry or reentry and unlawful presence.
- 256. — In general.
- 257. — Misrepresentation on visa application.
- 258. Expiration or revocation of visa; overstay.
- 259. Change of status.
- 260. False claim of citizenship.
- 261. Marriage.
- 262. — In general.
- 263. — Effect of marriage or divorce.
- 264. — Marriage fraud.
- 265. Involuntary entry, reentry, or departure.
- 266. Seamen and similar transients.
- 267. Violation of conditions.
- 268. — In general.
- 269. — Failure to register or report address change.
- 270. Crime and related grounds.
- 271. — In general.
- 272. — Crimes of moral turpitude in general.
- 273. — Aggravated felonies in general.
- 274. — Controlled substances offenses.
- 275. — Sex offenses.
- 276. — Crimes of violence.
- 277. — Fraud, forgery, and theft offenses.
- 278. — Firearms offenses.

**V. DENIAL OF ADMISSION AND  
REMOVAL.(Cont'd)**

- 279. — Number of crimes or convictions.
- 280. — Time of crime or conviction.
- 281. — What constitutes conviction.
  - (1). In general.
  - (2). Finality.
  - (3). Effect of expungement or vacation.
  - (4). Juvenile violations and proceedings.
- 282. — Sentencing requirements.
  - (1). In general.
  - (2). Length of sentence.
  - (3). Effect of suspension or probation.
  - (4). Recommendation for or against removal; plea agreements.
- 283. — Effect of pardon or parole.
- 284. — Collateral attack on conviction.
- 285. Security and related grounds.
- 286. — In general.
- 287. — Espionage and enemy aliens.
- 288. — Membership in subversive organization.
- 289. — Terrorist activity.
- 290. — Foreign policy concerns.
- 291. Assisting in persecution or genocide.
- 292. Defenses.

**(D) RELIEF FROM DENIAL OF ADMISSION  
OR REMOVAL IN GENERAL.**

- 299. In general.
- 300. Discretionary relief in general.
- 301. Waiver of inadmissibility or removal in general.
- 302. Legalization and amnesty.
- 303. Registry.
- 304. Voluntary departure.
- 305. — In general.
- 306. — Good moral character requirement.
- 307. — Time for departure; extensions.
- 308. — Failure to depart.
- 309. Adjustment of status.
- 310. Cancellation of removal or suspension of deportation in general.
- 311. — In general.
- 312. — Good moral character requirement.



**24. ALIENS, IMMIGRATION, AND CITIZENSHIP****V. DENIAL OF ADMISSION AND  
REMOVAL.(Cont'd)**

- 313. Continuous physical presence or unrelinquished domicile.
- 314. — In general.
- 315. — Stop time rule.
- 316. Marriage as basis for relief.
- 317. Hardship as basis for relief.
- 318. Stay of removal or deportation.
- 319. Commission of crime as basis for denial of relief.
- 320. — In general.
- 321. — Aggravated felonies in general.
- 322. — Controlled substances offenses.
- 323. — Sex offenses.
- 324. — Length of sentence or imprisonment.

**(E) ADMINISTRATIVE PROCEDURE.**

- 329. In general.
- 330. Civil proceedings in general.
- 331. Distinction between admissibility and removal proceedings.
- 332. Time limitations in general.
- 333. Expedited removal.
- 334. Application or petition.
- 335. — In general.
- 336. — Time limitations for filing.
- 337. Notice; order to show cause.
- 338. Informing alien of rights in general.
- 339. Hearing.
- 340. — In general.
- 341. — Right to hearing.
- 342. — Venue.
- 343. — Attendance at hearing; failure to appear.
- 344. — Time for hearing; continuance.
- 345. — Witnesses.
- 346. — Conduct of hearing; fairness in general.
- 347. — Assistance of counsel.
- 348. — Assistance of translator.
- 349. — Findings or statement of reasons.
- 350. — Determination.
- 351. Administrative review.
- 352. — In general.
- 353. — Time limitations.
  - (1). In general.
  - (2). Tolling.

**V. DENIAL OF ADMISSION AND  
REMOVAL.(Cont'd)**

- 354. — Summary dismissal.
- 355. — Findings or statement of reasons.
- 356. — Determination.
- 357. — Summary affirmance; single or multiple member review.
- 358. Reopening, reconsideration, or remand.
- 359. — In general.
- 359.5. — Numerical limitations.
- 360. — Time limitations.
  - (1). In general.
  - (2). Tolling.
- 361. — Discretion.
- 362. — Grounds and factors considered.
  - (1). In general.
  - (2). New evidence, facts, or circumstances.
  - (3). Excuse for failure to appear at hearing; insufficient notice.
  - (4). Ineffectiveness of counsel.
- 363. — Hearing or rehearing.
- 364. — Findings, statement of reasons, and determination.

**(F) ORDER AND WARRANT; ENFORCEMENT.**

- 369. In general.
- 370. Reinstatement of order.
- 371. Place to where removed or deported.
- 372. — In general.
- 373. — Acceptance by government.
- 374. Operation and effect in general.
- 375. Collateral attack.
- 376. — In general.
- 377. — Failure to advise alien of rights in general.
- 378. — Ineffective counsel.
- 379. — Denial of right to appeal; waiver of right.
- 380. Conclusiveness; res judicata and collateral estoppel.
- 381. Expenses; carriers' and third persons' rights, duties, and liabilities.

**(G) JUDICIAL REVIEW OR INTERVENTION.**

- 384. In general.
- 385. Jurisdiction and venue.
- 386. Exhaustion of remedies in general.
- 387. Right of review or intervention; standing.

**24. ALIENS, IMMIGRATION, AND CITIZENSHIP****V. DENIAL OF ADMISSION AND  
REMOVAL.(Cont'd)**

- 388. Presentation and preservation of questions at administrative level.
- 389. Presentation of questions in brief or petition.
- 390. Stay pending review.
- 391. Record.
- 392. Decisions reviewable.
- 393. Time limitations.
- 394. — In general.
- 395. — Tolling.
- 396. Standard and scope of review.
- 397. — In general.
- 398. — Review of initial decision or administrative review.
- 399. — De novo review in general.
- 400. — Presumptions.
- 401. — Review of discretion.
- 402. — Constitutional questions.
- 403. — Fact questions.
  - (1). In general.
  - (2). Substantial evidence in general.
  - (3). Credibility.
- 404. — Law questions.
- 405. — Effect of irregularities; harmless or prejudicial error.
- 406. Determination.
- 407. — In general.
- 408. — Affirmance.
- 409. — Modification.
- 410. — Reversal.
- 411. — Remand.
- 412. Further administrative proceedings.
- 413. Injunction.
- 414. Subsequent review.

**(H) EVIDENCE IN ADMINISTRATIVE  
OR JUDICIAL PROCEEDINGS.**

- 420. In general.
- 421. Administrative notice.
- 422. Presumptions and burden of proof.
- 423. Admissibility.
- 424. Weight and sufficiency.
- 425. — In general.
- 426. — Adverse credibility determinations in general.
- 427. — Unlawful entry or reentry and unlawful presence.
- 428. — Marriage fraud.

**V. DENIAL OF ADMISSION AND  
REMOVAL.(Cont'd)**

- 429. — Crimes and immorality.
- 430. — Security and related grounds.

**VI. ARREST, DETENTION, SUPERVISION,  
AND PAROLE.****(A) IN GENERAL.**

- 435. In general.
- 436. Constitutional and statutory provisions.

**(B) BORDER STOPS AND INSPECTIONS.**

- 440. In general.
- 441. Grounds or cause for stop.
- 442. Searches incident to stop or inspection.
- 443. Time and distance factors.
- 444. — In general.
- 445. — Checkpoints.
- 446. — Airport stops.

**(C) ARREST.**

- 450. In general.
- 451. Arrest warrants.
- 452. Arrests without warrants.
- 453. — In general.
- 454. — Probable cause.
- 455. Investigatory stops and temporary detention; interrogation.
- 456. Searches incident to arrest.
- 457. Advising alien of rights in general.
- 458. Notice of right to contact consulate.
- 459. Effect of unlawful arrest or search.

**(D) DETENTION, SUPERVISION, AND PAROLE.**

- 460. In general.
- 461. Supervision in general.
- 462. Detention in general.
- 463. Detention of inadmissible or excludable aliens.
- 464. Detention pending removal proceeding.
- 465. — In general.
- 466. — Time limitations.
- 467. Detention after order of removal.
- 468. — In general.
- 469. — Time limitations; indefinite detention.
- 470. Bond or bail.
- 471. Parole or temporary admission.
- 472. — In general.

**24. ALIENS, IMMIGRATION, AND CITIZENSHIP****VI. ARREST, DETENTION, SUPERVISION,  
AND PAROLE.(Cont'd)**

- 473. — Discretion.
- 474. — Grounds for parole or denial; de-termination.
- 475. — Effect of parole; rights of paroled aliens.
- 476. — Revocation or expiration.
- 477. Incarcerated aliens.
- 478. — In general.
- 479. — Removal or deportation before completion of sentence.
- 480. — Detention after completion of sen-tence.

**(E) JUDICIAL REVIEW OR INTERVENTION.**

- 485. In general.

**VII. ASYLUM, REFUGEES,  
AND WITHHOLDING  
OF REMOVAL.****(A) IN GENERAL.**

- 490. In general.
- 491. Constitutional and statutory provisions.
- 492. — In general.
- 493. — Purpose.
- 494. — Validity.
- 495. — Retroactive operation.

**(B) ASYLUM DISTINGUISHED FROM WITHHOLDING  
OF REMOVAL OR DEPORTATION.**

- 500. In general.
- 501. Discretionary or mandatory.
- 502. Reasonable fear of persecution or clear probability standard.
- 503. Effect of failure to meet standard for asylum.

**(C) ELIGIBILITY; REFUGEE STATUS.**

- 504. In general.
- 505. Ineligible aliens.
- 506. — In general.
- 507. — Aliens not within United States.
- 508. — Participants in persecution.
- 509. — Crimes and related grounds.
  - (1). In general.
  - (2). Aggravated felonies in general.
  - (3). Controlled substances offenses.
  - (4). Sex offenses.
- 510. — Security and related grounds.

**VII. ASYLUM, REFUGEES,  
AND WITHHOLDING OF  
REMOVAL.(Cont'd)**

- (1). In general.
  - (2). Terrorist activity.
  - 511. — Aliens firmly resettled in third country.
  - 512. — Aliens able to relocate in other part of home country.
  - 513. Temporary protected status.
- (D) PERSECUTION.**
- 520. In general.
  - 521. Standards for persecution.
  - 522. — In general.
  - 523. — Past persecution.
    - (1). In general.
    - (2). Particular cases.
    - (3). Humanitarian grant.
  - 524. — Well founded fear of future perse-cution.
    - (1). In general.
    - (2). Particular cases.
  - 525. — Subjective and objective tests.
    - (1). In general.
    - (2). Particular cases.
  - 526. — Clear probability standard for withholding of removal.
    - (1). In general.
    - (2). Particular cases.
  - 527. Acts constituting persecution.
  - 528. — In general.
  - 529. — Economic deprivation.
  - 530. — Threats, harassment, and acts of violence.
    - (1). In general.
    - (2). Family members or neighbors.
  - 531. — Detention or imprisonment.
  - 532. — Compulsory military service.
  - 533. — Female genital mutilation.
  - 534. Grounds for persecution; protected groups.
  - 535. — In general.
  - 536. — Race.
  - 537. — Religion.
  - 538. — Nationality.
  - 539. — Membership in social group.
  - 540. — Political opinion in general.
  - 541. — Forced abortion or coerced sterili-zation.

## 24. ALIENS, IMMIGRATION, AND CITIZENSHIP

VII. ASYLUM, REFUGEES,  
AND WITHHOLDING OF  
REMOVAL.(Cont'd)

542. Government action or acquiescence.

543. Changed country conditions.

## (E) RELIEF UNDER TREATIES AGAINST TORTURE.

550. In general.

551. Acts constituting torture.

552. Standard for relief.

553. Government action or acquiescence.

## (F) ADMINISTRATIVE PROCEDURE.

560. In general.

561. Application.

562. — In general.

563. — Time limitations for filing.

563.5. — Frivolous application.

564. Hearing or interview.

565. — In general.

566. — Right to hearing.

567. — Notice.

568. — Venue.

569. — Attendance at hearing; failure to appear.

570. — Time for hearing; continuance.

571. — Witnesses.

572. — Conduct of hearing; fairness in general.

573. — Assistance of counsel.

574. — Assistance of translator.

575. — Findings or statement of reasons.

576. — Determination.

577. Administrative review.

578. — In general.

579. — Time limitations.

(1). In general.

(2). Tolling.

580. — Findings or statement of reasons.

581. — Determination.

582. — Summary affirmance; single or multiple member review.

583. Reopening, reconsideration, or remand.

584. — In general.

584.5. — Numerical limitations.

585. — Time limitations.

(1). In general.

(2). Tolling.

586. — Discretion.

VII. ASYLUM, REFUGEES,  
AND WITHHOLDING OF  
REMOVAL.(Cont'd)

587. — Grounds and factors considered.

(1). In general.

(2). New evidence, facts or circumstances.

(3). Excuse for failure to appear at hearing; insufficient notice.

(4). Changed country conditions.

(5). Ineffectiveness of counsel.

588. — Hearing or rehearing.

589. — Findings, statement of reasons, and determination.

590. Decision or order.

591. — In general.

592. — Conclusiveness.

593. Expenses; carriers' and third persons' rights, duties, and liabilities.

## (G) JUDICIAL REVIEW OR INTERVENTION.

599. In general.

600. Jurisdiction and venue.

601. Exhaustion of remedies in general.

602. Right of review or intervention; standing.

603. Presentation and preservation of questions at administrative level.

604. Presentation of questions in brief or petition.

605. Stay pending review.

606. Record.

607. Decisions reviewable.

608. Time limitations.

609. — In general.

610. — Tolling.

611. Standard and scope of review.

612. — In general.

613. — Review of initial decision or administrative review.

614. — De novo review in general.

615. — Presumptions.

616. — Review of discretion.

617. — Constitutional questions.

618. — Fact questions.

(1). In general.

(2). Substantial evidence in general.

(3). Credibility.

619. — Law questions.

**24. ALIENS, IMMIGRATION, AND CITIZENSHIP****VII. ASYLUM, REFUGEES,  
AND WITHHOLDING OF  
REMOVAL.(Cont'd)**

- 620. — Effect of irregularities; harmless or prejudicial error.
- 621. Determination.
- 622. — In general.
- 623. — Affirmance.
- 624. — Modification.
- 625. — Reversal.
- 626. — Remand.
- 627. Further administrative proceedings.
- 628. Injunction.
- 629. Subsequent review.

**(H) EVIDENCE IN ADMINISTRATIVE  
OR JUDICIAL PROCEEDINGS.**

- 635. In general.
- 636. Administrative notice.
- 637. Presumptions and burden of proof.
- 638. — In general.
- 639. — Past persecution.
- 640. Admissibility.
- 641. Weight and sufficiency.
- 642. — In general.
- 643. — Adverse credibility determinations in general.
- 644. — Country conditions; official reports.

**VIII. CITIZENSHIP AND NATURALIZATION.****(A) CITIZENSHIP.**

- 650. In general.
- 651. Constitutional and statutory provisions.
- 652. Who are citizens.
- 653. — In general.
- 654. — Nationals of United States.
- 655. — Persons born within jurisdiction.
- 656. — Persons born before independence of colonies.
- 657. — Foreign citizens in territories acquired by United States.
- 658. — Inhabitants of territory admitted as state.
- 659. — Persons married to citizens.
- 660. — Persons married to aliens.
- 661. — Children of citizens in general.
- 662. — Children of citizens born abroad; acquired citizenship.
  - (1). In general.

**VIII. CITIZENSHIP AND  
NATURALIZATION.(Cont'd)**

- (2). Children born to unmarried parents.
  - 663. — Dual nationality.
  - 664. Proceedings to determine citizenship.
  - 665. — In general.
  - 666. — Jurisdiction, venue, and prerequisites to suit.
  - 667. — Persons entitled to sue.
  - 668. — Parties.
  - 669. — Petition or pleading.
  - 670. — Evidence.
    - (1). In general.
    - (2). Presumptions and burden of proof.
    - (3). Admissibility.
    - (4). Weight and sufficiency.
  - 671. — Hearing or trial.
  - 672. Nature and incidents of citizenship in general.
  - 673. Restrictions on travel.
  - 674. Passports and travel documents.
  - 675. — In general.
  - 676. — Revocation.
  - 677. — Proceedings.
  - 678. Citizens of United States and of the several states.
  - 679. Transfer of citizenship on cession of territory.
  - 680. Expatriation.
  - 681. — In general.
  - 682. — Power of Congress; statutory provisions.
  - 683. — Grounds and acts constituting.
    - (1). In general.
    - (2). Renunciation of citizenship.
    - (3). Allegiance, naturalization, or service to foreign country.
    - (4). Participation in foreign election.
    - (5). Infants and derivative citizens.
    - (6). Dual nationals.
  - 684. — Proceedings.
    - (1). In general.
    - (2). Evidence and fact questions.
  - 685. — Reacquiring citizenship.
- (B) NATURALIZATION.**
- 689. In general.
  - 690. Power to naturalize.

**24. ALIENS, IMMIGRATION, AND CITIZENSHIP**

<b>VIII. CITIZENSHIP AND NATURALIZATION.(Cont'd)</b>	<b>VIII. CITIZENSHIP AND NATURALIZATION.(Cont'd)</b>
691. Constitutional and statutory provisions.	720. — Application.
692. — In general.	(1). In general.
693. — Purpose.	(2). Time limitations.
694. — Validity.	721. — Examination.
695. — Retroactive operation.	722. — Witnesses.
696. Nature of and right to naturalization.	723. — Evidence.
697. Persons capable.	(1). In general.
698. Qualifications.	(2). Presumptions and burden of proof.
699. — In general.	(3). Admissibility.
700. — Age.	(4). Weight and sufficiency.
701. — Residence and physical presence.	724. — Hearing.
(1). In general.	725. — Decision.
(2). Mode of entry.	726. — Review.
(3). Temporary absences; exceptions.	727. Record, certificate, and evidence of nat- uralization.
702. — Literacy and educational require- ments.	728. Operation and effect.
703. — Good moral character.	729. Denaturalization.
(1). In general.	730. — In general.
(2). Crimes in general.	731. — Constitutional and statutory provi- sions.
(3). Aggravated felonies in general.	732. — Grounds in general.
(4). Controlled substances offenses.	733. — Illegal or fraudulent procurement of naturalization in general.
(5). Moral turpitude.	734. — Ineligibility for citizenship.
(6). Effect of parole, probation, or pardon.	(1). In general.
(7). Sex offenses.	(2). Assistance in persecution.
704. — Claim of exemption from military service.	735. — Moral character in general.
705. — Attachment to constitutional prin- ciples.	736. — Concealment of material fact or willful misrepresentation in applica- tion.
706. — Oath of allegiance.	737. — Disloyalty.
707. — Alien enemies and aliens with for- eign military service.	738. — Errors and irregularities in natural- ization proceedings.
708. Particular types of aliens.	739. — Defenses.
709. — In general.	740. Proceedings for denaturalization.
710. — Persons serving in or honorably discharged from armed forces.	741. — In general.
711. — Seamen serving on merchant ves- sels.	742. — Nature and form of remedy.
712. — Spouses of citizens.	743. — Jurisdiction and venue.
713. — Children of citizens and derivative citizenship.	744. — Limitations and laches.
714. — Persons with disabilities.	745. — Process.
715. Proceedings for naturalization.	746. — Preliminary complaint or affidavit.
716. — In general.	747. — Pleading.
717. — Jurisdiction and venue.	748. — Evidence.
718. — Declaration of intention.	(1). In general.
719. — Certificate of arrival or entry.	(2). Presumptions and burden of proof.

**24. ALIENS, IMMIGRATION, AND CITIZENSHIP****VIII. CITIZENSHIP AND  
NATURALIZATION.(Cont'd)**

- (3). Admissibility.
- (4). Weight and sufficiency.
- 749. — Hearing.
- 750. — Determination.
- 751. — Review.

**IX. ALIEN TORT CLAIMS.**

- 760. In general.
- 761. Torts covered.
- 762. — In general.
- 763. — Violation of law of nations.
- 764. — Violation of treaty of United States.
- 765. Persons liable; state action.
- 766. Actions.
- 767. Torture victim protection.

**X. OFFENSES, PENALTIES  
AND PROSECUTIONS.**

- 769. In general.
- 770. Constitutional and statutory provisions.
- 771. Unlawful entry or presence.
- 772. Possession of firearm.
- 773. Reentry after removal.
- 774. Facilitating unlawful entry or unlawful presence.
- 775. — In general.
- 776. — Participating in, encouraging, or inducing unlawful entry.
- 777. — Transporting alien.
- 778. — Harboring or concealing alien.
- 779. Failure to register or possess registration certificate.
- 780. False claim of citizenship.
- 781. Fraud or misuse of visas, permits, or other documents.
- 782. Illegal or fraudulent procurement of naturalization.
- 783. False statement in passport application.
- 784. Marriage fraud.
- 785. Failure to comply with removal or deportation.
- 786. Employment of undocumented alien.
- 787. — In general.
- 788. — Failure of employer to verify status.
- 789. — Use of fraudulent documents by alien.

**X. OFFENSES, PENALTIES AND  
PROSECUTIONS.(Cont'd)**

- 790. Liability of vessel, owner or master.
- 791. Actions for civil penalties.
- 792. Prosecutions.
- 793. — In general.
- 794. — Indictment and information.
- 795. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Admissibility.
  - (4). Weight and sufficiency.
- 796. — Trial.
- 797. — Questions for jury.
- 798. — Instructions.
- 799. — Sentencing and punishment.

**25. ALTERATION OF INSTRUMENTS****SUBJECTS INCLUDED**

Acts done upon instruments in writing, by a party or parties thereto or interested therein, by which the language or meaning is changed

Materiality and effect of such alterations in general

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Bona fide purchasers of altered negotiable paper, rights of, see **COMMERCIAL PAPER**

Forgery, see **FORGERY**

Insurance policies, see **INSURANCE XIII(J)**

Records, alterations of, see **RECORDS**

Wills, alterations of made by the testator, see **WILLS**

- 1. Materiality.
  - 1.1. — In general.
- 2. — Nature and extent of change in general.
- 3. — Parties.
- 4. — Consideration.
- 5. — Subject-matter.

**25T. ALTERNATIVE DISPUTE RESOLUTION**

- (1). In general.
- (2). Negotiable instruments.
- 6. — Place, time, and date.
- 7. — Filling blanks.
- 8. — Signatures, indorsements, and seals.
- 9. — Marginal matter and annexed writings.
- 10. Time of alteration.
- 11. Persons making alteration, and intent.
  - (1). In general.
  - (2). Alteration by stranger.
- 12. Authority or consent of parties.
- 13. Ratification or waiver.
- 14. Restoration of instrument.
- 15. Effect upon rights of parties.
- 15.1. — In general.
- 16. — Written instruments in general.
- 17. — Conveyances.
- 18. — Contracts in general.
- 19. — Obligations under seal.
- 20. — Negotiable instruments.
- 21. — Official certificates and returns.
- 22. Persons who may complain of alteration or question validity of instrument.
- 23. Rights founded on original transaction or consideration.
- 24. Admissibility of instrument in evidence.
  - (1). In general.
  - (2). Necessity of explanation.
- 25. Pleading.
- 26. Evidence.
- 26.1. — In general.
- 27. — Presumptions.
- 27.1. — Burden of proof.
  - (1). In general.
  - (2). Explaining alterations.
- 28. — Admissibility in general.
- 29. — Weight and sufficiency.
- 30. Questions for jury.

**25T. ALTERNATIVE DISPUTE RESOLUTION****SUBJECTS INCLUDED**

Submission of controversies by the parties thereto to persons chosen by themselves for

determination, including arbitration, mediation, appraisal, conciliation, and other methods

Agreements to arbitrate or mediate disputes, and enforcement thereof

Requisites, validity, operation and effect of such submission and the award thereon

Rights, powers, duties and proceedings of arbitrators, mediators, appraisers, umpires, etc.

Enforcing, modifying, or setting aside award

Pleading arbitration and award as defense

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Mediated settlement agreements, see COMPROMISE, SETTLEMENT, AND RELEASE

Reference of issues in pending actions under provision of statutes or rules or orders of courts, see REFERENCE

Public bodies, arbitration of claims against, see STATES, MUNICIPAL CORPORATIONS, and other specific topics

Particular classes of contracts, stipulations for arbitration in, see INSURANCE, LABOR AND EMPLOYMENT, LANDLORD AND TENANT, PARTNERSHIP, and other specific topics

Labor disputes, arbitration of, see LABOR AND EMPLOYMENT XII(H)

Insurance coverage, disputes about, see INSURANCE XXVII(B)7

Vessel charter party disputes, arbitration of, see SHIPPING ¶39(7)

Boundary disputes, arbitration of, see BOUNDARIES ¶46(5)

Child custody disputes, arbitration or mediation of, see CHILD CUSTODY ¶419

International law disputes between sovereign governments, arbitration of, see INTERNATIONAL LAW ¶221

Partition, by arbitration, see PARTITION ¶6

Automobile accident indemnity funds, arbitration of claims against, see AUTOMOBILES ¶251.17

- I. IN GENERAL, ¶100–109.
- II. ARBITRATION, ¶110–439.
  - (A) NATURE AND FORM OF PROCEEDING, ¶110–129.



**25T. ALTERNATIVE DISPUTE RESOLUTION****II. ARBITRATION—Cont'd**

(B) AGREEMENTS TO ARBITRATE, ¶130–159.

(C) SUBMISSION, ¶160–174.

(D) PERFORMANCE, BREACH, ENFORCEMENT, AND CONTEST, ¶175–219.

(E) ARBITRATORS, ¶220–249.

(F) ARBITRATION PROCEEDINGS, ¶250–299.

(G) AWARD, ¶300–349.

(H) REVIEW, CONCLUSIVENESS, AND ENFORCEMENT OF AWARD, ¶350–409.

(I) EXCHANGES AND DEALER ASSOCIATIONS, ¶410–439.

**III. MEDIATION, ¶440–499.**

(A) IN GENERAL, ¶440–449.

(B) AGREEMENTS TO MEDIATE, ¶450–459.

(C) PERFORMANCE, BREACH, ENFORCEMENT, AND CONTEST OF AGREEMENT TO MEDIATE, ¶460–469.

(D) MEDIATORS, ¶470–479.

(E) MEDIATION PROCEEDINGS, ¶480–499.

**IV. OTHER DISPUTE RESOLUTION METHODS, ¶500–509.****V. FOREIGN DISPUTE RESOLUTION PROCEEDINGS, ¶510–515.****I. IN GENERAL.**

100. In general.

**II. ARBITRATION.****(A) NATURE AND FORM OF PROCEEDING.**

110. In general.

111. Nature, purpose, and right to arbitration in general.

112. Contractual or consensual basis.

113. Arbitration favored; public policy.

114. Constitutional and statutory provisions and rules of court.

115. Common law or statutory arbitration.

116. What law governs.

117. Preemption.

118. Matters which may be subject to arbitration under law.

119. — In general.

120. — Matters of public interest.

121. — Statutory rights and obligations.

122. — Property ownership and rights.

123. — Illegal contracts and transactions.

**II. ARBITRATION.(Cont'd)**

124. — Employment disputes.

125. Compulsory arbitration.

**(B) AGREEMENTS TO ARBITRATE.**

130. In general.

131. Requisites and validity.

132. — In general; formation of agreement.

133. — Formal requisites.

(1). In general.

(2). Writing, signature, and acknowledgment.

134. — Validity.

(1). In general.

(2). Consideration.

(3). Validity of assent.

(4). Choice of law.

(5). Forum selection.

(6). Unconscionability.

135. Modification or termination.

136. Construction.

137. — In general.

138. — Liberal or strict construction.

139. — Construction in favor of arbitration.

140. Severability.

141. Persons affected or bound.

142. Disputes and matters arbitrable under agreement.

143. — In general.

144. — Building contracts disputes.

145. — Sales contracts disputes.

146. — Employment disputes.

147. — Credit card disputes.

148. Place of arbitration.

149. Designation of arbitrators.

150. Operation and effect.

151. — In general.

152. — As ousting jurisdiction of or precluding resort to courts.

153. — As condition precedent to action; exhaustion or prior resort.

154. — Effect on pending action.

155. — Partial arbitrability.

156. — Provisional remedies; injunction, attachment, or declaratory judgment.

**25T. ALTERNATIVE DISPUTE RESOLUTION****(C) SUBMISSION.**

- 160. In general.
- 161. Nature and necessity.
- 162. Requisites and validity.
- 163. — In general.
- 164. — Writing, signature, and acknowledgment.
- 165. — Designation of subject matter.
- 166. Making submission rule or order of court.
- 167. Arbitration bonds and notes.
- 168. Amendment or modification.
- 169. Revocation or setting aside.
- 170. Construction and operation.
- 171. — In general.
- 172. — Parties bound.
- 173. — Scope of submission.
- 174. — Effect on pending or subsequent action.

**(D) PERFORMANCE, BREACH, ENFORCEMENT, AND CONTEST.**

- 175. In general.
- 176. Performance or breach.
- 177. Right to enforcement and defenses in general.
- 178. — In general.
- 179. — Persons entitled to enforce.
- 180. — Conditions precedent.
- 181. — Applicant's default, delay, or laches.
- 182. — Waiver or estoppel.
  - (1). In general.
  - (2). Suing or participating in suit.
- 183. Demand or notice.
- 184. Jurisdiction and powers of court.
- 185. Stay of arbitration.
- 186. — In general.
- 187. — Application.
- 188. — Proceedings.
- 189. — Review.
- 190. Stay of proceedings pending arbitration.
- 191. — In general.
- 192. — Elements.
- 193. — Discretion.
- 194. — Proceedings.
- 195. — Dismissal.
- 196. — Particular cases.
- 197. Matters to be determined by court.
- 198. — In general.

**II. ARBITRATION.(Cont'd)**

- 199. — Existence and validity of agreement.
- 200. — Arbitrability of dispute.
- 201. — Conditions precedent to arbitration; procedural arbitrability.
- 202. — Waiver, laches, or estoppel.
- 203. — Merits of controversy.
- 204. Remedies and proceedings for enforcement in general.
- 205. — In general.
- 206. — Nature and form of proceeding.
- 207. — Limitations.
- 208. — Parties.
- 209. — Pleading.
- 210. — Evidence.
- 211. — Trial or hearing.
- 212. — Judgment or order.
- 213. — Review.
  - (1). In general.
  - (2). Jurisdiction.
  - (3). Decisions reviewable; finality.
  - (4). Presentation and reservation of grounds for review.
  - (5). Scope and standards of review.
  - (6). Determination and disposition.
- 214. — Costs.
- 215. Failure to arbitrate.
- 216. — In general.
- 217. — Sanctions.
- 218. Liabilities on arbitration bonds and agreements.

**(E) ARBITRATORS.**

- 220. In general.
- 221. Appointment.
- 222. Competency.
- 223. Oath.
- 224. Arbitrator standards and discipline.
- 225. — In general.
- 226. — Standards or codes of conduct.
- 227. — Proceedings.
- 228. Nature and extent of authority.
- 229. — In general.
- 230. — Agreement or submission as determinative.
- 231. — Particular issues or questions.
- 232. — Questions of law or fact.
- 233. — Grounds and rules of decision.

**25T. ALTERNATIVE DISPUTE RESOLUTION****II. ARBITRATION.(Cont'd)**

- 234. — Matters considered; personal knowledge.
- 235. — Scope of relief.
- 236. Termination of authority.
- 237. Delegation of authority.
- 238. Arbitration organizations.
- 239. Umpire or third arbitrator.
- 240. — In general.
- 241. — Necessity for appointment.
- 242. — Appointment and qualification.
- 243. — Authority.
- 244. — Proceedings.
- 245. — Decision of controversy.
- 246. Compensation.
- 247. Liabilities of arbitrators.

**(F) ARBITRATION PROCEEDINGS.**

- 250. In general.
- 251. Mode and course of proceedings in general.
- 252. Discovery and depositions.
- 253. Subpoenas.
- 254. Dismissal.
- 255. Consolidation of proceedings.
- 256. Hearing.
- 257. — In general.
- 258. — Right to hearing.
- 259. — Notice.
- 260. — Time and place.
- 261. — Counsel in general.
- 262. — Presence of parties and counsel.
- 263. — Adjournments; continuance.
- 264. Reception of evidence.
- 265. — In general.
- 266. — Application of judicial rules.
- 267. — Witnesses.
- 268. Concurrence of arbitrators in proceedings and decision.
- 269. Costs.
- 270. Objections.
- 271. — In general.
- 272. — To arbitrators or umpire.
- 273. — For defects and irregularities in proceedings.
- 274. Waiver of objections.
- 275. — In general.
- 276. — To submission.
- 277. — To arbitrators or umpire.

**II. ARBITRATION.(Cont'd)**

- 278. — To defective or irregular proceedings in general.
- 279. — Notice of hearing.
- 280. — Oath.
- 281. — Evidence and witnesses.

**(G) AWARD.**

- 300. In general.
- 301. Nature and essentials in general.
- 302. Making and formal requisites.
- 303. — In general.
- 304. — Time of making.
- 305. — Mode and form of making.
- 306. — Contents in general.
- 307. — Findings, conclusions, and reasons for decision.
- 308. — Execution and attestation.
- 309. — Publication and delivery.
- 310. — Return to court.
- 311. Sufficiency in general.
- 312. Conformity to public policy.
- 313. Conformity to submission.
- 314. — In general.
- 315. — Parties to award.
- 316. Actions exceeding arbitrator's authority.
- 317. Completeness.
- 318. Mutuality.
- 319. Finality.
- 320. Certainty.
- 321. — In general.
- 322. — Parties.
- 323. — Subject matter.
- 324. Consistency and reasonableness; lack of evidence.
- 325. Amount of award, or overvaluation and undervaluation.
- 326. Defects and irregularities in procedure.
- 327. Mistake or error.
- 328. — In general.
- 329. — Error of judgment or mistake of law.
- 330. — Mistake of fact and miscalculation.
- 331. Fraud, partiality, or misconduct.
- 332. — In general.
- 333. — Parties' fraud or misconduct.
- 334. — Arbitrators' fraud or misconduct in general.

**25T. ALTERNATIVE DISPUTE RESOLUTION****II. ARBITRATION.(Cont'd)**

- 335. — Prejudice or partiality and interest in subject matter.
- 336. Partial invalidity.
- 337. Presumptions and burden of proof.
- 338. — In general.
- 339. — Conformity to submission.
- 340. — Burden of showing error or invalidity.
- 341. Ratification; waiver or repudiation.
- 342. Objections and exceptions to award, and waiver thereof.
- 343. Amended and supplemental awards.
- 344. Reconsideration by arbitrators.

**(H) REVIEW, CONCLUSIVENESS, AND ENFORCEMENT OF AWARD.**

- 350. In general.
- 351. Arbitration appeal boards and internal review.
- 352. Recommittal to arbitrators by court.
- 353. Confirmation or acceptance by court.
- 354. — In general.
- 355. — Jurisdiction and venue.
- 356. — Application or petition.
- 357. — Proceedings.
- 358. — Scope of inquiry.
- 359. — Costs.
- 360. Impeachment or vacation.
- 361. — In general.
- 362. — Grounds for impeachment or vacation.
  - (1). In general.
  - (2). Limitation to statutory grounds.
  - (3). Particular grounds.
  - (4). Newly discovered evidence.
- 363. — Motion to set aside or vacate.
  - (1). In general.
  - (2). Nature and form of remedy.
  - (3). Jurisdiction and venue.
  - (4). Time for proceeding.
  - (5). Form and sufficiency of motion.
  - (6). Scope of inquiry in general.
  - (7). Merits.
  - (8). Affidavits, evidence, or record.
  - (9). Determination and disposition.
  - (10). Modification.
- 364. — Costs.
- 365. — Action to set aside or vacate.

**II. ARBITRATION.(Cont'd)**

- 366. Appeal or other proceedings for review.
- 367. — In general.
- 368. — Decisions reviewable.
- 369. — Right of review.
- 370. — Parties.
- 371. — Presentation and reservation of grounds of review.
- 372. — Proceedings for transfer.
- 373. — Record and briefs.
- 374. — Scope and standards of review.
  - (1). In general.
  - (2). Matters or evidence considered.
  - (3). Merits.
  - (4). Evidence and trial de novo.
  - (5). Presumptions.
  - (6). Discretion.
  - (7). Questions of law or fact.
  - (8). Harmless error.
- 375. — Hearing and determination in general.
- 376. — Modification.
- 377. — Costs.
- 378. Collateral attack.
- 379. Construction and operation in general.
- 380. Merger and bar of causes of action and defenses.
- 381. Conclusiveness of adjudication.
- 382. — In general.
- 383. — Impeachment for misbehavior, fraud, or mistake only.
- 384. — Erroneous or void awards in general.
- 385. — Persons concluded.
- 386. — Matters concluded.
- 387. — Effect of entry of judgment on award.
- 388. Performance of award.
- 389. — In general.
- 390. — Excuse for nonperformance.
- 391. Enforcement in general.
- 392. Entry of judgment on award.
- 393. Actions to enforce award.
- 394. — In general.
- 395. — Right of action and form of remedy.
- 396. — Defenses.
- 397. — Conditions precedent.
- 398. — Time to sue and limitations.

**25T. ALTERNATIVE DISPUTE RESOLUTION****II. ARBITRATION.(Cont'd)**

- 399. — Parties.
- 400. — Pleading.
- 401. — Evidence.
- 402. — Trial.
- 403. — Judgment.
- 404. — Review.
- 405. — Costs.
- 406. Pleading and evidence of award as estoppel or defense.
- 407. Parol evidence as to award.
- 408. — In general.
- 409. — Testimony of arbitrators.

**(I) EXCHANGES AND DEALER ASSOCIATIONS.**

- 410. In general.
- 411. Relations between customer-investors and broker-dealers.
- 412. — In general.
- 413. — Agreements to arbitrate.
- 414. — Performance, breach, enforcement, and contest of agreement.
- 415. — Arbitrators and proceedings.
- 416. — Award.
- 417. — Review, conclusiveness, and enforcement of award.
- 418. Employees of exchanges or dealer associations.
- 419. — In general.
- 420. — Agreements to arbitrate.
- 421. — Performance, breach, enforcement, and contest of agreement.
- 422. — Arbitrators and proceedings.
- 423. — Award.
- 424. — Review, conclusiveness, and enforcement of award.
- 425. Mutual dealings of exchanges or dealer associations.
- 426. — In general.
- 427. — Agreements to arbitrate.
- 428. — Performance, breach, enforcement, and contest of agreement.
- 429. — Arbitrators and proceedings.
- 430. — Award.
- 431. — Review, conclusiveness, and enforcement of award.

**III. MEDIATION.****(A) IN GENERAL.**

- 440. In general.
- 441. Nature, purpose, and right to mediation in general.
- 442. Contractual or consensual basis.
- 443. Mediation favored; public policy.
- 444. Compulsory mediation; mediation as condition precedent.

**(B) AGREEMENTS TO MEDIATE.**

- 450. In general.
- 451. Requisites and validity.
- 452. Persons affected.
- 453. Matters within scope of agreement.
- 454. Construction, operation and effect.

**(C) PERFORMANCE, BREACH, ENFORCEMENT, AND CONTEST OF AGREEMENT TO MEDIATE.**

- 460. In general.
- 461. Right to enforcement and defenses.
- 462. Remedies and proceedings.
- 463. Failure to mediate.

**(D) MEDIATORS.**

- 470. In general.
- 471. Mediator standards; discipline.
- 472. Selection and qualifications.
- 473. Nature and extent of authority.
- 474. Liabilities; immunity.

**(E) MEDIATION PROCEEDINGS.**

- 480. In general.
- 481. Mode and course of proceedings.
- 482. Award; evaluation.
- 483. — In general.
- 484. — Making and formal requisites.
- 485. — Ratification, waiver, or repudiation.
- 486. — Confirmation or acceptance by court.
- 487. — Impeachment or vacation.
- 488. — Appeal or other proceeding for review.
- 489. — Operation and effect.
- 490. — Enforcement.
- 491. Costs.
- 492. Sanctions for failure to accept mediation award.

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IV. OTHER DISPUTE RESOLUTION METHODS.

- 500. In general.
- 501. Appraisal.
- 502. Conciliation.

V. FOREIGN DISPUTE RESOLUTION PROCEEDINGS.

- 510. In general.
- 511. What law governs.
- 512. International arbitration organizations.
- 513. Agreements.
- 514. Proceedings.
- 515. Enforcement and recognition of awards.

27. AMICUS CURIAE

SUBJECTS INCLUDED

Persons, whether attorneys or laymen, who interpose in a judicial proceeding to assist the court by giving information or otherwise, or who conduct an investigation or other proceeding on request or appointment therefor by the court

Their rights, powers, duties, and liabilities

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Assignment of attorneys by the court as counsel, see ATTORNEYS AND LEGAL SERVICES

- 1. Right to appear and act in general.
- 2. Compensation.
- 3. Powers, functions, and proceedings.

28. ANIMALS

SUBJECTS INCLUDED

Animals as the subjects of property or of legal protection or regulation, other than game and fish

Nature and incidents of rights of property in animals, and liabilities for injuries by them; injuries to animals in general

Regulations for the protection of animals from disease, ill treatment, etc., and relating to estrays

Contracts for feeding, care, and use or hire

Offense of cruelty to animals

Livery Stable Keepers

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Conveyances and contracts relating to animals, see SALES, CHATTEL MORTGAGES, BAILMENT, CARRIERS, INSURANCE, and other specific topics

Fence laws, see FENCES

Game, rights of taking and protection of, see GAME

Particular types of negligence causing injuries to animals, see AUTOMOBILES, NEGLIGENCE, RAILROADS, HIGHWAYS, and other specific topics

Protection of wildlife, particularly endangered or threatened species, see ENVIRONMENTAL LAW

1.5. Animals as property; status.

*Animals inhabiting the water, see FISH* *et seq.*

- (1). In general.
- (2). Wild animals in unconfined state, in general.
- (3). Captured, confined or domesticated animals, in general.
- (4). Dogs.
- (5). Horses, cattle, sheep and other livestock.
- (6). Birds and fowl.
- (7). Bees.
- (8). Other particular animals.
- (9). Evidence of ownership.

2.5. Licensing.

- (1). In general.
- (2). Constitutional provisions, statutes and ordinances.
- (3). Licenses, permits and tags.
- (4). Taxes and fees.

3.5. Regulation in general.

- (1). In general.
- (2). Power to regulate in general; preemption.

**28. ANIMALS**

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| <ul style="list-style-type: none"> <li>(3). Constitutional provisions, statutes and ordinances.</li> <li>(4). Particular regulations.</li> <li>(5). Protective and anti-cruelty regulation in general.</li> <li>(6). Laboratory and research animals.</li> <li>(7). Fighting and contests.</li> <li>(8). Searches, seizures, inspections and forfeitures.</li> <li>(9). Prosecutions and proceedings; review.</li> <li>(10). Penalties, punishments and costs.</li> <li>(11). Animal welfare societies and agencies.</li> <li>5. Marks and brands.</li> <li>5.1. — In general.</li> <li>6. — Adoption and use in general.</li> <li>7. — Statutory regulations.</li> <li>8. — Recording.</li> <li>9. — Transfer.</li> <li>10. — Evidence of ownership.</li> <li>11. — Destroying or altering.</li> <li>12. — False marking or branding.</li> <li>13. — Criminal prosecutions.</li> <li>14. Driving from range or pasture, and herding or confining young animals apart from their mothers.</li> <li>15. Regulation of slaughtering.</li> <li>16. Breeding and registration.</li> <li>16.1. — In general.</li> <li>17. — Statutory regulations.</li> <li>18. — Contracts.</li> <li>19. — Lien.</li> <li>20. — Right to offspring.</li> <li>21. Agistment, keeping, and care.</li> <li>21.1. — In general.</li> <li>22. — Rights and duties in general.</li> <li>23. — Loss of or injuries to animals. <ul style="list-style-type: none"> <li>(1). In general.</li> <li>(2). Actions.</li> </ul> </li> <li>24. — Injuries by animals.</li> <li>25. — Compensation.</li> <li>26. — Lien. <ul style="list-style-type: none"> <li>(.5). In general.</li> <li>(1). Existence, nature and incidents.</li> <li>(2). Persons entitled to lien.</li> <li>(3). Persons liable and property subject to lien.</li> <li>(4). Waiver and extinguishment.</li> <li>(5). Enforcement.</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>27. Hire and use.</li> <li>28. Contagious and infectious diseases.</li> <li>28.1. — In general.</li> <li>29. — Statutory and official regulations in general.</li> <li>30. — Quarantine.</li> <li>31. — Restrictions upon transportation.</li> <li>32. — Destruction of diseased animals.</li> <li>33. — Liabilities for communication of disease.</li> <li>34. — Offenses.</li> <li>35. — Penalties for violations of regulations.</li> <li>36. — Criminal prosecutions.</li> <li>37. — Liabilities of officers, state or municipalities.</li> <li>43. Injuring or killing animals in general.</li> <li>43.1. — In general.</li> <li>44. — Civil liability.</li> <li>45. — Criminal responsibility.</li> <li>46. Conversion.</li> <li>47. Running at large.</li> <li>47.1. — In general.</li> <li>48. — Rights and duties of owners.</li> <li>49. — Statutory regulations in general.</li> <li>50. — Stock laws. <ul style="list-style-type: none"> <li>(1). In general.</li> <li>(2). Adoption of stock laws.</li> <li>(3). Duties of owners.</li> <li>(4). What constitutes running at large.</li> <li>(5). Restraint of animals used for breeding.</li> </ul> </li> <li>51. — Impounding animals at large.</li> <li>52. — Killing or injuring animals at large.</li> <li>53. — Injuries by animals at large.</li> <li>54. — Persons liable for injuries.</li> <li>55. — Actions.</li> <li>56. — Penalties for violations of regulations.</li> <li>57. — Criminal prosecutions.</li> <li>58. Estrays.</li> <li>58.1. — In general.</li> <li>59. — Rights of owners.</li> <li>60. — Statutory regulations.</li> <li>61. — Impounding or taking up.</li> <li>62. — Injuries by stray animals.</li> <li>63. — Actions and other proceedings for damages.</li> <li>64. — Penalties for violations of regulations.</li> </ul> |
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## 28. ANIMALS

- 65. — Criminal prosecutions.
- 66. Injuries to persons.
- 66.1. — Duties and liabilities in general.
- 66.2. — Vicious propensities and knowledge thereof.
- 66.3. — Defenses in general.
- 66.4. — Persons liable for injuries.
  - (1). In general.
  - (2). Landlords.
- 66.5. — Dogs.
  - (1). Duties and liabilities in general.
  - (2). Vicious propensities and knowledge thereof.
  - (3). Defenses in general.
  - (4). Contributory and comparative negligence.
  - (5). Provocation.
  - (6). Assumption of risk.
  - (7). Persons liable for injuries in general.
  - (8). Landlords.
- 66.6. — Cats.
- 66.7. — Horses and other equines.
- 66.8. — Cattle and other livestock.
- 66.9. — Other particular animals.
- 73. — Killing vicious animals.
- 74. — Actions.
  - (.5). In general.
  - (1). Nature of remedy and parties.
  - (2). Pleading.
  - (3). Presumptions and burden of proof.
  - (4). Admissibility of evidence.
  - (5). Weight and sufficiency of evidence.
  - (6). Damages.
  - (7). Instructions.
  - (8). Questions for jury.
  - (9). Verdict and findings.
- 75. — Penalties for violations of regulations.
- 76. — Criminal prosecutions.
- 77. Injuries to other animals.
- 77.1. — In general.
- 78. — Duties of owners in general.
- 79. — Statutory regulations.
- 80. — Domestic animals in general.
- 81. — Dogs.
- 82. — Knowledge or notice of vicious propensities.
- 83. — Persons liable for injuries.
- 84. — Killing vicious animals.
- 85. — Actions.
- 86. — Penalties for violations of regulations.
- 87. — Criminal prosecutions.
- 88. — Liabilities of state or municipalities.
- 89. Trespassing.
- 89.1. — In general.
- 90. — Duties of owners.
- 91. — Statutory regulations in general.
- 92. — Fencing and fence laws.
- 93. — What constitutes a trespass.
- 94. — Driving off trespassing animals.
- 95. — Impounding or distraining trespassing animals, and lien for damages.
  - (1). In general.
  - (2). Rights and remedies of owner of animals.
- 96. — Injuring or killing trespassing animals.
- 97. — Liabilities for trespasses in general.
- 98. — Effect of defects in fences.
- 99. — Persons liable for injuries.
- 100. — Actions and other proceedings for damages.
  - (.5). In general.
  - (1). Nature and form of remedy.
  - (2). Defenses, time to sue, and limitations.

*See also LIMITATION OF ACTIONS.*

  - (3). Parties and pleading.
  - (4). Evidence.
  - (5). Notice of distraint.
  - (6). Appraisement of damages.
  - (7). Attachment and execution.
  - (8). Measure and elements of damages.
  - (9). Trial, judgment, and review.
  - (10). Costs.
- 101. — Penalties for violations of regulations.
- 102. — Criminal prosecutions.
- 103. Pounds.
- 103.1. — In general.
- 104. — Establishment and maintenance.
- 105. — Poundkeepers.
- 106. — Sale of impounded animals.
- 107. — Redemption of impounded animals.



**28. ANIMALS**

- 108. — Offenses.
- 109. — Penalties.
- 110. — Criminal prosecutions.
- 111. Livery, boarding, and riding stables.
- 111.1. — In general.
- 112. — Hiring of horses and vehicles.
- 113. — Penalties and offenses for violation of regulations.

**29. ANNUITIES****SUBJECTS INCLUDED**

Sums of money stipulated to be paid yearly or at other fixed intervals, perpetually or during life or a term of years, not reserved out of or charged on realty

Requisites, validity, construction, and operation of annuities and annuity contracts

Regulation of annuities, and of companies, including insurance companies, issuing annuities

Agents in transactions involving annuities, and regulation thereof

Rights, remedies, and civil liabilities with respect to the purchase, sale, and payment of annuities

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Bequests of annuities, see WILLS, especially WILLS ¶684.2(6)

Distribution of estate, payment of annuities with respect to, see EXECUTORS AND ADMINISTRATORS ¶306

Income and estate taxation with respect to annuities, see INTERNAL REVENUE ¶3121, 4157 and TAXATION ¶3358, 3452

Regulation of securities as affecting annuities, see SECURITIES REGULATION ¶5.30, 14.18

Regulation of employee pension plans, with respect to annuities payable thereunder, see LABOR AND EMPLOYMENT VII

Rent charges and ground rents, see PROPERTY ¶113, III(C)5

Trust provisions for annuities, see TRUSTS, especially TRUSTS ¶281

- 11. In general.
- 12. What law governs.
- 13. Preemption.
- 14. Nature, creation, requisites and validity.
- 15. — In general.
- 16. — Insurance or other arrangements distinguished, in general.
- 17. — Particular cases.
- 18. Construction and operation, in general.
- 19. Duration and termination, in general.
- 20. Rescission or avoidance for fraud or mistake.
- 21. Modification or conversion.
- 22. Payment and satisfaction, in general.
- 23. Persons and property chargeable, in general.
- 24. Arrears and interest thereon.
- 25. Apportionment as to time.
- 26. Persons entitled to proceeds; annuitants and beneficiaries.
- 27. — In general.
- 28. — Change of beneficiary in general.
- 29. — Spouses and children; effect of divorce.
- 30. Regulation in general.
- 31. Fiduciary relationships and duties, in general.
- 32. Agents and brokers, in general.
- 33. Rights and remedies in general.
- 34. Civil liabilities.
- 35. — In general; negligence or bad faith.
- 36. — Breach of fiduciary duty.
- 37. — Fraud or misrepresentation; concealment.

**29T. ANTITRUST AND TRADE REGULATION****SUBJECTS INCLUDED**

Regulation of trade practices generally, including regulation in the interest of maintaining competition

**29T. ANTITRUST AND TRADE REGULATION**

Unfair competition, whether grounded in statute or the common law	Covenants not to compete as governed by the common law, see <b>CONTRACTS</b>
Statutory unfair trade practices	Grants of exclusive or special privileges or immunities in respect of any occupation or business, see <b>MONOPOLIES</b>
Consumer protection statutes and regulations	Injuries from defects in products, remedies for, see <b>PRODUCTS LIABILITY, SALES</b>
Consumer fraud statutes and regulations	Insurance practices, regulation specific to, see <b>INSURANCE</b>
Other statutory regulation of trade practices, intended for the immediate protection of buyers, purchasers, and consumers, in various particular contexts, such as—	Inventions, patents, and copyrights, exclusive rights under laws relating to, see <b>PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY</b>
Disclosure obligations in the sale of real estate, motor vehicles, and other subjects	Licensing, regulations attendant on, see <b>LICENSES</b>
Manufactured housing	Particular products, regulations specifically relating to trade in, see <b>ALCOHOLIC BEVERAGES, CONTROLLED SUBSTANCES, FOOD, HEALTH, and other specific topics</b>
Warranties and service contracts	Particular types of traders, regulation specific to, see <b>BROKERS, FACTORS, HAWKERS AND PEDDLERS</b>
Debt collection practices	Price regulation grounded in war or emergency powers, see <b>WAR AND NATIONAL EMERGENCY</b>
Consumer product safety	Retail Installment Sales Acts, see <b>FINANCE, BANKING, AND CREDIT III</b>
Packers and stockyards, statutory regulation of	Sales and warranties as governed by the common law or the Uniform Commercial Code, see <b>SALES</b>
Franchises, distributors, and dealerships, statutory regulation of	Telephone Consumer Protection Act, see <b>TELECOMMUNICATIONS</b>
Federal Trade Commission Act, liabilities and remedies under	Trademarks, trade names, and trade dress, see <b>TRADEMARKS</b>
Trade secrets and proprietary information	Truth in Lending Act, see <b>FINANCE, BANKING, AND CREDIT XVI</b>
Price regulation not grounded in war or emergency powers	Unfair competition and unfair or deceptive trade practices involving trademarks, trade names, or trade dress, see <b>TRADEMARKS</b>
Antitrust statutes and regulations	Usury, see <b>USURY</b>
Combinations in restraint of trade	Weights and measures, regulation of, see <b>WEIGHTS AND MEASURES</b>
Monopolization and attempts to monopolize	
Mergers and acquisitions	
Agencies for the administration of antitrust and trade regulation laws, their powers and proceedings, and judicial review of their decisions or actions	
Criminal offenses, prosecutions, and penalties under antitrust and trade regulation laws	
<b>SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS</b>	
Bank mergers, see <b>FINANCE, BANKING, AND CREDIT IV(P)</b>	
Commerce, promotion and regulation of, see <b>COMMERCE</b>	
Consumer credit statutes and regulations, and remedies thereunder, see <b>FINANCE, BANKING, AND CREDIT III, XVI</b>	
Consumer Leasing Act, see <b>FINANCE, BANKING, AND CREDIT XVI(D)</b>	
Contracts in restraint of trade or commerce as governed by the common law, see <b>CONTRACTS</b>	
	I. IN GENERAL, ¶1–9.
	II. UNFAIR COMPETITION, ¶10–124.
	(A) IN GENERAL, ¶10–59.
	(B) ACTIONS AND PROCEEDINGS, ¶60–99.
	(C) RELIEF, ¶100–124.

**29T. ANTITRUST AND TRADE REGULATION**

- III. STATUTORY UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION, ¶125–409.
  - (A) IN GENERAL, ¶125–159.
  - (B) PARTICULAR PRACTICES, ¶160–189.
  - (C) PARTICULAR SUBJECTS AND REGULATIONS, ¶190–249.
  - (D) PARTICULAR RELATIONSHIPS, ¶250–279.
  - (E) ENFORCEMENT AND REMEDIES, ¶280–409.
    - 1. IN GENERAL, ¶280–299.
    - 2. FEDERAL TRADE COMMISSION, ¶300–324.
    - 3. OTHER FEDERAL ADMINISTRATIVE AGENCIES, ¶325–334.
    - 4. STATE AND LOCAL ADMINISTRATIVE AGENCIES, ¶335–349.
    - 5. ACTIONS, ¶350–365.
    - 6. EVIDENCE, ¶366–369.
    - 7. RELIEF, ¶370–409.
- IV. TRADE SECRETS AND PROPRIETARY INFORMATION, ¶410–449.
  - (A) IN GENERAL, ¶410–425.
  - (B) ACTIONS, ¶426–449.
- V. PRICE REGULATION, ¶450–519.
  - (A) IN GENERAL, ¶450–479.
  - (B) ENFORCEMENT AND REMEDIES, ¶480–519.
- VI. ANTITRUST REGULATION IN GENERAL, ¶520–609.
  - (A) IN GENERAL, ¶520–536.
  - (B) CARTELS, COMBINATIONS, CONTRACTS, AND CONSPIRACIES IN GENERAL, ¶537–552.
  - (C) MARKET POWER; MARKET SHARE, ¶553–559.
  - (D) ILLEGAL RESTRAINTS OR OTHER MISCONDUCT, ¶560–574.
  - (E) PARTICULAR INDUSTRIES OR BUSINESSES, ¶575–609.
- VII. MONOPOLIZATION, ¶610–709.
  - (A) IN GENERAL, ¶610–624.
  - (B) CARTELS, COMBINATIONS, CONTRACTS, AND CONSPIRACIES, ¶625–640.
  - (C) MARKET POWER; MARKET SHARE, ¶641–649.
  - (D) ILLEGAL RESTRAINTS OR OTHER MISCONDUCT, ¶650–669.
  - (E) PARTICULAR INDUSTRIES OR BUSINESSES, ¶670–709.
- VIII. ATTEMPTS TO MONOPOLIZE, ¶710–756.

- VIII. ATTEMPTS TO MONOPOLIZE
  - Cont'd
  - (A) IN GENERAL, ¶710–719.
  - (B) PARTICULAR INDUSTRIES OR BUSINESSES, ¶720–756.
- IX. MERGERS AND ACQUISITIONS, ¶757–810.
  - (A) IN GENERAL, ¶757–774.
  - (B) PARTICULAR INDUSTRIES OR BUSINESSES, ¶775–810.
- X. ANTITRUST AND PRICES, ¶811–899.
  - (A) IN GENERAL, ¶811–820.
  - (B) PRICE FIXING IN GENERAL, ¶821–822.
  - (C) RESALE PRICE MAINTENANCE, ¶823–831.
  - (D) PREDATORY PRICING, ¶832–838.
  - (E) PRICE DISCRIMINATION, ¶839–859.
  - (F) COMMUNICATING PRICE INFORMATION TO COMPETITORS, ¶860–864.
  - (G) PARTICULAR INDUSTRIES OR BUSINESSES, ¶865–899.
- XI. ANTITRUST EXEMPTIONS AND DEFENSES, ¶900–919.
- XII. ANTITRUST LAW AND TRADE AND PROFESSIONAL ASSOCIATIONS, ¶920–924.
- XIII. ANTITRUST LAW AND JOINT VENTURES, ¶925–929.
- XIV. ANTITRUST LAW AND NON-PROFITS, ¶930–934.
- XV. ANTITRUST LAW AND LABOR, ¶935–944.
- XVI. ANTITRUST AND FOREIGN TRADE, ¶945–949.
- XVII. ANTITRUST ACTIONS, PROCEEDINGS, AND ENFORCEMENT, ¶950–1004.
  - (A) IN GENERAL, ¶950–957.
  - (B) ACTIONS, ¶958–1004.
- XVIII. PENALTIES AND FINES, ¶1005–1009.
- XIX. OFFENSES AND PROSECUTIONS, ¶1010–1020.

**I. IN GENERAL.**

- 1. In general.
- 2. Protection and regulation in general.
- 3. Constitutional and statutory provisions in general.
- 4. What law governs in general.
- 5. Preemption in general.
- 6. Practices prohibited or required in general.
- 7. Administrative regulation in general.

**29T. ANTITRUST AND TRADE REGULATION****I. IN GENERAL.**(Cont'd)

- 8. Actions and proceedings in general.
- 9. Industrial recovery acts.

**II. UNFAIR COMPETITION.****(A) IN GENERAL.**

- 10. In general.
- 11. Protection and regulation in general.
- 12. Constitutional and statutory provisions.
- 13. What law governs.
- 14. Preemption.
- 15. Practices prohibited or required in general; elements.
- 16. — In general; what is unfair competition.
- 17. — Confusion or deception.
- 18. — Intent.
- 19. Representations, assertions, and descriptions in general.
- 20. Omissions and other failures to act in general; disclosure.
- 21. Advertising, marketing, and promotion.
- 22. — In general.
- 23. — Particular cases.
- 24. Labeling and packaging.
- 25. Representations concerning others or their products; disparagement.
- 26. — In general.
- 27. — Particular cases.
- 28. Comparisons; comparative advertising.
- 29. Origin, representations concerning.
- 30. Sponsorship, approval, or connection, representations concerning.
- 31. Creation, distribution, sale, and use of products in general.
- 32. Imitation, simulation, or resemblance.
- 33. — In general.
- 34. — Products and merchandise.
- 35. — Labeling and packaging.
- 36. — Design.
- 37. — Color.
- 38. — Literary, artistic, or entertainment works.
- 39. — Other particular subjects of imitation, simulation, or resemblance.
- 40. Passing off or palming off.
- 41. — In general.
- 42. — Reverse passing off or palming off.
- 43. Misappropriation.

**II. UNFAIR COMPETITION.**(Cont'd)

- 44. Relabeling and repackaging.
- 45. Repairs; used and reconditioned products.
- 46. Replacement parts; supplies.
- 47. Substitution of products.
- 48. Assertion of rights.
- 49. Practices involving particular relationships.
- 50. — In general.
- 51. — Principal and agent.
- 52. — Employer and employee.
- 53. — Acquirer and acquiree.
- 54. Miscellaneous particular practices.
- 55. Administrative agencies.

**(B) ACTIONS AND PROCEEDINGS.**

- 60. In general.
- 61. Nature and form.
- 62. Exclusive and concurrent remedies.
- 63. Conditions precedent.
- 64. Persons protected and entitled to sue.
- 65. Persons liable.
- 66. Defenses.
- 67. — In general.
- 68. — Discontinuance of method or practice.
- 69. — Privilege or immunity.
- 70. Time to sue; limitations.
- 71. — In general.
- 72. — Delay in assertion of rights; laches.
- 73. Parties.
- 74. Pleading.
- 75. — In general.
- 76. — Particular cases.
- 77. — Defenses; answer and counterclaim.
- 78. — Issues, proof, and variance.
- 79. Evidence.
- 80. — In general.
- 81. — Presumptions, inferences, and burden of proof.
- 82. — Admissibility.
- 83. — Weight and sufficiency.
- 84. — Consumer data and market research; tests and surveys.
- 85. Proceedings; trial.
- 86. — In general.
- 87. — Questions of law or fact.

**29T. ANTITRUST AND TRADE REGULATION****II. UNFAIR COMPETITION.(Cont'd)**

- 88. — Instructions.
- 89. Verdict, findings, and judgment.
- (C) RELIEF.**
- 100. In general.
- 101. Injunction.
- 102. — In general.
- 103. — Grounds, subjects, and scope of relief.
  - (1). In general.
  - (2). Particular cases.
- 104. — Preliminary or temporary relief, grounds, subjects, and scope.
  - (1). In general.
  - (2). Particular cases.
- 105. — Proceedings to impose; evidence.
- 106. — Continuing, modifying, vacating, or dissolving.
- 107. — Violation; punishment.
- 108. Monetary relief; damages.
- 109. — In general.
- 110. — Grounds and subjects.
  - (1). In general.
  - (2). Particular cases.
- 111. — Measure and amount.
- 112. — Profits.
- 113. — Punitive or exemplary damages.
- 114. — Enhanced damages; double or treble damages.
- 115. Accounting.
- 116. Costs.
- 117. — In general.
- 118. — Attorney fees.
- 119. — Proceedings to impose; evidence.

**III. STATUTORY UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION.****(A) IN GENERAL.**

- 125. In general.
- 126. Constitutional and statutory provisions.
- 127. — In general.
- 128. — Purpose and construction in general.
- 129. — Validity.
- 130. — Retroactive operation.
- 131. What law governs; territorial limitations.
- 132. Preemption.
- 133. Nature and elements.

**III. STATUTORY UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION.(Cont'd)**

- 134. — In general.
- 135. — Practices prohibited or required.
  - (1). In general; unfairness.
  - (2). Source of prohibition or obligation; lawfulness.
- 136. — Fraud; deceit; knowledge and intent.
- 137. — Confusion.
- 138. — Reliance; causation; injury, loss, or damage.
- 139. Persons and transactions covered under general statutes.
- 140. — In general.
- 141. — Consumers, purchasers, and buyers; consumer transactions.
- 142. — Sellers and suppliers.
- 143. — Businesses in general; competitors and competition.
  - (1). In general.
  - (2). Businesses as consumers.
- 144. — Subject matter of transaction in general.
- 145. — Goods or services.
- 146. — Trade or commerce; business activity.
  - (1). In general.
  - (2). Interstate commerce.
  - (3). International or foreign commerce.
- 147. — Contractual relationships and breach of contract in general.
- 148. — Tortious conduct and negligence in general.
- 149. Number or frequency of transactions or acts.
- 150. Completion of transaction.
- 151. Public impact or interest; private or internal transactions.
- 152. Exemptions and safe harbors.
- (B) PARTICULAR PRACTICES.**
- 160. In general.
- 161. Representations, assertions, and descriptions in general.
- 162. Omissions and other failures to act in general; disclosure.
- 163. Advertising, marketing, and promotion.
- 164. Labeling and packaging.

**29T. ANTITRUST AND TRADE REGULATION****III. STATUTORY UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION.**(Cont'd)

- 165. Representations concerning others or their products; disparagement.
- 166. Comparisons; comparative advertising.
- 167. Origin, representations concerning.
- 168. Sponsorship, approval, or connection, representations concerning.
- 169. Creation, distribution, sale, and use of products in general.
- 170. Imitation, simulation, or resemblance.
- 171. Passing off or palming off.
- 172. Reverse passing off or palming off.
- 173. Misappropriation.
- 174. Relabeling and repackaging.
- 175. Repairs; used and reconditioned products.
- 176. Replacement parts; supplies.
- 177. Substitution of products.
- 178. Assertion of rights.
- 179. Other particular practices.

**(C) PARTICULAR SUBJECTS AND REGULATIONS.**

- 190. In general.
- 191. Motor vehicles.
- 192. — In general.
- 193. — Sale.
- 194. — Lease or rental.
- 195. — Service and repair.
- 196. — Odometers and mileage.
- 197. Boats.
- 198. Real property in general.
- 199. Housing sales.
- 200. Housing rentals.
- 201. Mobile homes.
- 202. Manufactured housing.
- 203. Construction, renovation, improvement, and repair.
- 204. Warranties and service contracts.
- 205. — In general.
- 206. — Motor vehicles; “lemon” laws.
- 207. — Mobile homes.
- 208. — Other particular subjects.
- 209. Finance and banking in general; lending.

*Consumer credit statutes and regulations, see FINANCE, BANKING, AND CREDIT III, XVI.*

- 210. Debt collection.

*Federal and state debt collection practices statutes and regulations, see FINANCE, BANKING, AND CREDIT III(B)4, XVI(I).*

- 218. Credit repair and counseling.  
*Consumer credit statutes and regulations, see FINANCE, BANKING, AND CREDIT ¶64, XVI(F).*
- 219. Securities and investments.
- 220. Savings.  
*Truth in Savings Act and similar disclosure requirements, see FINANCE, BANKING, AND CREDIT IV(I)4.*
- 221. Insurance.
- 222. Health care and medical insurance.
- 223. Home solicitation or delivery.
- 224. Telecommunications; telemarketing.
- 225. Clubs; membership contracts.
- 226. Travel services.
- 227. Moving and storage services.
- 228. Social-referral and dating services.
- 229. Funeral and burial services.
- 230. Going-out-of-business sales.
- 231. Pyramid, chain, or referral sale plans.
- 232. Product safety.
- 233. — In general.
- 234. — Motor vehicles.
- 235. — Other particular products.
- 236. Tobacco; cigarettes.
- 237. Packers and stockyards.
- 238. Privacy.

*Financial records and privacy, see FINANCE, BANKING, AND CREDIT XVII.*

- 239. Other particular subjects and regulations.

**(D) PARTICULAR RELATIONSHIPS.**

- 250. In general.
- 251. Principal and agent.
- 252. Employer and employee.
- 253. Fiduciaries.
- 254. Professionals.
- 255. — In general.
- 256. — Legal professionals; attorney and client.
- 257. — Medical professionals; doctor and patient.
- 258. — Accountants and tax preparers.
- 259. — Other particular professions.
- 260. Manufacturers, distributors, wholesalers, and retailers in general.
- 261. Licensor and licensee.
- 262. Franchises; distributorships and dealerships.

**29T. ANTITRUST AND TRADE REGULATION****III. STATUTORY UNFAIR TRADE PRACTICES  
AND CONSUMER PROTECTION.(Cont'd)**

- 263. — In general.
- 264. — Persons, relationships, and commodities covered.
- 265. — Practices prohibited or required in general.
- 266. — Duration, termination, and renewal.
- 267. — Transfer, sale, and assignment.
- 268. — Representations; disclosure obligations.
- 269. — Motor vehicle dealers.
  - (1). In general.
  - (2). Persons, relationships, and commodities covered.
  - (3). Practices prohibited or required in general.
  - (4). Duration, termination, and renewal.
  - (5). Transfer, sale, and assignment.
  - (6). Representations; disclosure obligations.
- 270. — Gasoline or petroleum dealers.
  - (1). In general.
  - (2). Persons, relationships, and commodities covered.
  - (3). Practices prohibited or required in general.
  - (4). Duration, termination, and renewal.
  - (5). Transfer, sale, and assignment.
  - (6). Representations; disclosure obligations.
- 271. Business opportunities; seller-assisted marketing plans.
- 272. Other particular relationships.

**(E) ENFORCEMENT AND REMEDIES.****1. IN GENERAL.**

- 280. In general.
- 281. Exclusive and concurrent remedies or laws.
- 282. — In general.
- 283. — Judicial remedies prior to or pending administrative proceedings.
- 284. Conditions precedent in general.
- 285. Exhaustion.
- 286. Notice and demand requirements; opportunity to cure.

**III. STATUTORY UNFAIR TRADE PRACTICES  
AND CONSUMER PROTECTION.(Cont'd)**

- 287. Persons entitled to sue or seek remedy.
- 288. — In general.
- 289. — Public entities or officials.
- 290. — Private entities or individuals.
- 291. Persons liable.
- 292. Privity.
- 293. Defenses.
- 294. — In general.
- 295. — Discontinuance of method or practice.
- 296. — Privilege or immunity.
- 297. Waiver of rights or remedies.

**2. FEDERAL TRADE COMMISSION.**

- 300. In general.
- 301. Officers and employees.
- 302. — In general.
- 303. — Ethical obligations; disqualification.
- 304. Powers, functions, jurisdiction, and authority.
- 305. Rules and rulemaking.
- 306. Investigations and reports.
- 307. Subpoenas; witnesses.
- 308. Proceedings.
- 309. — In general.
- 310. — Parties.
- 311. — Pleadings.
- 312. — Trial or hearing.
- 313. — Administrative review.
- 314. Decisions, determinations, and orders.
- 315. Judicial review.
- 316. — In general.
- 317. — Decisions or acts subject to review.
- 318. — Preservation of questions in administrative proceeding; record.
- 319. — Standard and scope of review.
- 320. — Harmless error.
- 321. — Proceedings; hearing.
- 322. — Determination and disposition.

**3. OTHER FEDERAL ADMINISTRATIVE AGENCIES.**

- 325. In general.
- 326. Officers and employees.
- 327. Powers, functions, jurisdiction, and authority.
- 328. Rules and rulemaking.

**29T. ANTITRUST AND TRADE REGULATION****III. STATUTORY UNFAIR TRADE PRACTICES  
AND CONSUMER PROTECTION.(Cont'd)**

- 329. Investigations and reports.
- 330. Subpoenas; witnesses.
- 331. Proceedings; hearing.
- 332. Decisions, determinations, and orders.
- 333. Judicial review.

**4. STATE AND LOCAL ADMINISTRATIVE AGENCIES.**

- 335. In general.
- 336. Officers and employees.
- 337. Powers, functions, jurisdiction, and authority.
- 338. Rules and rulemaking.
- 339. Investigations and reports.
- 340. Subpoenas; witnesses.
- 341. Proceedings; hearing.
- 342. Decisions, determinations, and orders.
- 343. Judicial review.

**5. ACTIONS.**

- 350. In general.
- 351. Nature and form.
- 352. Time to sue; limitations.
- 353. — In general.
- 354. — Delay in assertion of rights; laches.
- 355. Parties.
- 356. Pleading.
- 357. — In general.
- 358. — Particular cases.
- 359. — Defenses; answer and counterclaim.
- 360. — Issues, proof, and variance.
- 361. Proceedings; trial.
- 362. — In general.
- 363. — Questions of law or fact.
- 364. — Instructions.
- 365. Verdict, findings, and judgment.

**6. EVIDENCE.**

- 366. In general.
- 367. Presumptions, inferences, and burden of proof.
- 368. Admissibility.
- 369. Weight and sufficiency.

**7. RELIEF.**

- 370. In general.

**III. STATUTORY UNFAIR TRADE PRACTICES  
AND CONSUMER PROTECTION.(Cont'd)**

- 371. Administrative relief.
- 372. — In general.
- 373. — Cease and desist orders in general.
- 374. — Representations, advertisements, and labels, remedial orders relating to.
- 375. — Other particular remedial orders.
- 376. — Definiteness and certainty.
- 377. — Continuing, modifying, vacating, or dissolving.
- 378. — Compliance, violation, and enforcement.
  - (1). In general.
  - (2). Proceedings to enforce; evidence.
- 379. Administrative consent orders, settlements, and negotiated resolutions.
- 380. Injunction.
- 381. — In general.
- 382. — Grounds, subjects, and scope of relief.
  - (1). In general.
  - (2). Particular cases.
- 383. — Preliminary or temporary relief, grounds, subjects, and scope.
  - (1). In general.
  - (2). Particular cases.
- 384. — Proceedings to impose; evidence.
- 385. — Continuing, modifying, vacating, or dissolving.
- 386. — Violation; punishment.
- 387. Monetary relief; damages.
- 388. — In general.
- 389. — Grounds and subjects.
  - (1). In general.
  - (2). Particular cases.
- 390. — Measure and amount.
- 391. — Profits.
- 392. — Punitive or exemplary damages.
- 393. — Enhanced damages; double or treble damages.
- 394. Accounting.
- 395. Costs.
- 396. — In general.
- 397. — Attorney fees.
- 398. — Proceedings to impose; evidence.
- 399. Other particular remedies or forms of relief.
- 400. — In general.



**29T. ANTITRUST AND TRADE REGULATION****III. STATUTORY UNFAIR TRADE PRACTICES  
AND CONSUMER PROTECTION.(Cont'd)**

- 401. — Enforceability of contracts; rescission.
- 402. — Packers and Stockyards Act, remedies and relief under.

**IV. TRADE SECRETS AND PROPRIETARY  
INFORMATION.****(A) IN GENERAL.**

- 410. In general.
- 411. Constitutional and statutory provisions.
- 412. Purpose and scope of trade secret protection, in general.
- 413. What are “trade secrets” or other protected proprietary information, in general.
- 414. Elements of misappropriation.
- 415. What law governs.
- 416. Federal preemption.
- 417. Necessity that information be secret.
- 418. Confidential relation.
- 419. Vigilance in protecting secret; abandonment or waiver.
- 420. Particular cases, in general.
- 421. Customer lists and information.
- 422. Unfair practices by owner of trade secret.
- 423. Persons liable.
- 424. Persons entitled to sue.
- 425. Injury or harm from use of information.

**(B) ACTIONS.**

- 426. In general.
- 427. Defenses in general.
- 428. Pleading.
- 429. Evidence.
- 430. — In general.
- 431. — Presumptions and burden of proof.
- 432. — Weight and sufficiency of evidence.
- 433. Questions of law or fact.
- 434. Instructions.
- 435. Relief.  
*Injunctive relief, see INJUNCTION* ⇨ 1384.
- 436. — In general.
- 437. — Damages.
- 438. Costs and attorney fees.

**V. PRICE REGULATION.****(A) IN GENERAL.**

- 450. In general.
- 451. Power to regulate.
- 452. Constitutional and statutory provisions.
- 453. — In general.
- 454. — Purpose and construction in general.
- 455. — Validity.
- 456. — Retroactive operation.
- 457. What law governs; territorial limitations.
- 458. Preemption.
- 459. Practices prohibited or required in general.
- 460. Excessively high prices; maximum prices.
- 461. Excessively low prices; minimum prices.
- 462. — In general.
- 463. — Price cutting in general.
- 464. — Sales below cost in general.
- 465. Particular commodities or industries.
- 466. — In general.
- 467. — Motor vehicles.
- 468. — Motor fuel; petroleum and gasoline.
- 469. — Cigarettes and tobacco.
- 470. — Alcoholic beverages.
- 471. — Drugs and medicines.
- 472. — Agricultural products; food and groceries.
- 473. Sales below stipulated prices; “fair trade” laws.
- 474. Discrimination in price, services, or facilities.
- 475. Rebates and discounts.
- 476. Gifts, premiums, trading stamps, contests, and lotteries.
- 477. Representations about prices; advertising and labeling.

**(B) ENFORCEMENT AND REMEDIES.**

- 480. In general.
- 481. Exclusive and concurrent remedies or laws.
- 482. Conditions precedent.
- 483. Persons entitled to sue or seek remedy.
- 484. Persons liable.
- 485. Defenses.
- 486. Waiver of rights or remedies.

**29T. ANTITRUST AND TRADE REGULATION****V. PRICE REGULATION.**(Cont'd)

- 487. Administrative agencies.
- 488. — In general.
- 489. — Proceedings and orders.
- 490. — Judicial review and enforcement.
- 491. Actions.
- 492. — In general.
- 493. — Nature and form.
- 494. — Time to sue; limitations and laches.
- 495. — Parties.
- 496. — Pleading.
- 497. — Proceedings; trial.
- 498. — Verdict, findings, and judgment.
- 499. Evidence.
- 500. — In general.
- 501. — Presumptions, inferences, and burden of proof.
- 502. — Admissibility.
- 503. — Weight and sufficiency.
- 504. Relief.
- 505. — In general.
- 506. — Injunction.
- 507. — Preliminary injunction.
- 508. — Monetary relief; damages.
- 509. — Enhanced or punitive damages.
- 510. — Accounting.
- 511. — Costs and attorney fees.
- 512. — Violation of injunction or other order; contempt.

**VI. ANTITRUST REGULATION IN GENERAL.****(A) IN GENERAL.**

- 520. In general.
- 521. Federal and state issues.
- 522. Constitutional and statutory provisions.
- 523. — In general.
- 524. — Construction.
- 525. — Validity.
- 526. — Retroactive application.
- 527. Purpose of antitrust regulation.
- 528. — In general.
- 529. — Protection of competition rather than competitors.
- 530. What law governs.
- 531. Preemption.
- 532. Judicially created tests of legality.
- 533. — In general.
- 534. — Per se.

**VI. ANTITRUST REGULATION  
IN GENERAL.**(Cont'd)

- 535. — Rule of reason.
- 536. — “Quick look” and other tests.

**(B) CARTELS, COMBINATIONS, CONTRACTS,  
AND CONSPIRACIES IN GENERAL.**

- 537. In general.
- 538. Forms of combinations.
- 539. — In general.
- 540. — Horizontal.
- 541. — Vertical.
- 542. Participants.
- 543. — In general.
- 544. — Parent and subsidiary; sister corporations.
- 545. — Officers and directors.
- 546. — Employer/employee.
- 547. — Partners and partnerships.
- 548. — Franchise arrangements.
- 549. Territorial agreements.
- 550. — In general.
- 551. — Vertical.
- 552. — Horizontal.

**(C) MARKET POWER; MARKET SHARE.**

- 553. In general.
- 554. Elasticity of supply and demand.
- 555. Relevant market.
- 556. — In general.
- 557. — Product market.
- 558. — Geographic market.
- 559. — Entry barriers.

**(D) ILLEGAL RESTRAINTS OR  
OTHER MISCONDUCT.**

- 560. In general.
- 561. Predatory conduct.
- 562. Refusals to deal.
- 563. — In general.
- 564. — Exclusive dealing arrangements/agreements/distributorships.
- 565. — Essential facilities.
- 566. — Noncompete agreements.
- 567. Boycotts.
- 568. Tying agreements.
- 569. — In general.
- 570. — Separate or distinct products.
- 571. — Economic power.
- 572. — Barriers to entry.

**29T. ANTITRUST AND TRADE REGULATION****VI. ANTITRUST REGULATION  
IN GENERAL.**(Cont'd)

- 573. Requirements contracts.
- 574. Reciprocal dealing.

**(E) PARTICULAR INDUSTRIES OR BUSINESSES.**

- 575. In general.
- 576. Agricultural enterprises.
- 577. Computer and internet.
- 578. Entertainment.
- 579. — In general.
- 580. — Motion picture industry.
- 581. — Concerts and exhibitions.
- 582. Food and beverages; restaurants.
- 583. Insurance.
- 584. Intellectual property.
- 585. — In general.
- 586. — Copyrights.
- 587. — Patents.
  - (1). In general.
  - (2). Licensing.
  - (3). Patent misuse.
- 588. — Trade secrets.
- 589. — Trademarks.
- 590. Investment.
- 591. Leases.
- 592. Manufacturers.
- 593. Medical services.
- 594. Medical supplies and pharmaceuticals.
- 595. Newspapers and other publications.
- 596. Office equipment.
- 597. Oil, gas and mining.
- 598. Regulated industries.
- 599. — In general.
- 600. — Utilities.
- 601. Sports.
- 602. Telecommunications.
- 603. — In general.
- 604. — Television and radio.
- 605. — Telephone.
- 606. Transportation.

**VII. MONOPOLIZATION.****(A) IN GENERAL.**

- 610. In general.
- 611. Constitutional and statutory provisions.
- 612. — In general.
- 613. — Construction.
- 614. — Purpose.

**VII. MONOPOLIZATION.**(Cont'd)

- 615. — Validity.
- 616. — Retroactive application.
- 617. What law governs.
- 618. Preemption.
- 619. Elements in general.
- 620. — In general.
- 621. — Intent.

**(B) CARTELS, COMBINATIONS, CONTRACTS,  
AND CONSPIRACIES.**

- 625. In general.
- 626. Forms of combinations.
- 627. — In general.
- 628. — Horizontal.
- 629. — Vertical.
- 630. Participants.
- 631. — In general.
- 632. — Parent and subsidiary; sister corporations.
- 633. — Officers and directors.
- 634. — Employer/employee.
- 635. — Partners and partnerships.
- 636. — Franchise arrangements.
- 637. Territorial agreements.
- 638. — In general.
- 639. — Vertical.
- 640. — Horizontal.

**(C) MARKET POWER; MARKET SHARE.**

- 641. In general.
- 642. Elasticity of supply and demand.
- 643. Relevant market.
- 644. — In general.
- 645. — Product market.
- 646. — Geographic market.
- 647. — Entry barriers.

**(D) ILLEGAL RESTRAINTS OR  
OTHER MISCONDUCT.**

- 650. In general.
- 651. Judicially created tests of legality.
- 652. — In general.
- 653. — Per se.
- 654. — Rule of reason.
- 655. — “Quick look” and other tests.
- 656. Predatory conduct.
- 657. Refusals to deal.
- 658. — In general.

**29T. ANTITRUST AND TRADE REGULATION****VII. MONOPOLIZATION.(Cont'd)**

- 659. — Exclusive dealing arrangements/agreements/distributorships.
- 660. — Essential facilities.
- 661. — Noncompete agreements.
- 662. Boycotts.
- 663. Tying agreements.
- 664. — In general.
- 665. — Separate or distinct products.
- 666. — Economic power.
- 667. Requirements contracts.
- 668. Reciprocal dealing.

**(E) PARTICULAR INDUSTRIES OR BUSINESSES.**

- 670. In general.
- 671. Agricultural enterprises.
- 672. Computer and internet.
- 673. Entertainment.
- 674. — In general.
- 675. — Motion picture industry.
- 676. — Concerts and exhibitions.
- 677. Food and beverages; restaurants.
- 678. Insurance.
- 679. Intellectual property.
- 680. — In general.
- 681. — Copyrights.
- 682. — Patents.
- 683. — Trade secrets.
- 684. — Trademarks.
- 685. Investment.
- 686. Leases.
- 687. Manufacturers.
- 688. Medical services.
- 689. Medical supplies and pharmaceuticals.
- 690. Newspapers and other publications.
- 691. Office equipment.
- 692. Oil, gas and mining.
- 693. Regulated industries.
- 694. — In general.
- 695. — Utilities.
- 696. Sports.
- 697. Telecommunications.
- 698. — In general.
- 699. — Television and radio.
- 700. — Telephone.
- 701. Transportation.

**VIII. ATTEMPTS TO MONOPOLIZE.****(A) IN GENERAL.**

- 710. In general.
- 711. Constitutional and statutory provisions.
- 712. Elements in general.
- 713. — In general.
- 714. — Chance of success in the relevant market.
- 715. — Intent.
- 716. Persons potentially liable.
- 717. Elasticity of supply and demand.

**(B) PARTICULAR INDUSTRIES OR BUSINESSES.**

- 720. In general.
- 721. Agricultural enterprises.
- 722. Computer and internet.
- 723. Entertainment.
- 724. — In general.
- 725. — Motion picture industry.
- 726. — Concerts and exhibitions.
- 727. Food and beverages; restaurants.
- 728. Insurance.
- 729. Intellectual property.
- 730. — In general.
- 731. — Copyrights.
- 732. — Patents.
- 733. — Trade secrets.
- 734. — Trademarks.
- 735. Investment.
- 736. Leases.
- 737. Manufacturers.
- 738. Medical services.
- 739. Medical supplies and pharmaceuticals.
- 740. Newspapers and other publications.
- 741. Office equipment.
- 742. Oil, gas and mining.
- 743. Regulated industries.
- 744. — In general.
- 745. — Utilities.
- 746. Sports.
- 747. Telecommunications.
- 748. — In general.
- 749. — Television and radio.
- 750. — Telephone.
- 751. Transportation.

**29T. ANTITRUST AND TRADE REGULATION****IX. MERGERS AND ACQUISITIONS.****(A) IN GENERAL.**

- 757. In general.
- 758. Constitutional and statutory provisions.
- 759. — In general.
- 760. — Construction.
- 761. — Validity.
- 762. — Retroactive application.
- 763. Preemption.
- 764. What law governs.
- 765. Relevant market in general.
- 766. Geographical market; section of country.
- 767. Product market; line of commerce.
- 768. Types and forms.
- 769. — In general.
- 770. — Vertical.
- 771. — Horizontal.
- 772. — Conglomerate.
- 773. Interlocking directorates.

**(B) PARTICULAR INDUSTRIES OR BUSINESSES.**

- 775. In general.
- 776. Agricultural enterprises.
- 777. Computer and internet.
- 778. Entertainment.
- 779. — In general.
- 780. — Motion picture industry.
- 781. — Concerts and exhibitions.
- 782. Food and beverages; restaurants.
- 783. Insurance.
- 784. Intellectual property.
- 785. — In general.
- 786. — Copyrights.
- 787. — Patents.
- 788. — Trade secrets.
- 789. — Trademarks.
- 790. Investment.
- 791. Leases.
- 792. Manufacturers.
- 793. Medical services.
- 794. Medical supplies and pharmaceuticals.
- 795. Newspapers and other publications.
- 796. Office equipment.
- 797. Oil, gas, and mining.
- 798. Regulated industries.
- 799. — In general.
- 800. — Utilities.
- 801. Telecommunications.

**IX. MERGERS AND ACQUISITIONS.(Cont'd)**

- 802. — In general.
- 803. — Television and radio.
- 804. — Telephone.
- 805. Sports.
- 806. Transportation.

**X. ANTITRUST AND PRICES.****(A) IN GENERAL.**

- 811. In general.
- 812. Constitutional and statutory provisions.
- 813. — In general.
- 814. — Purpose and construction in general.
- 815. — Validity.
- 816. — Retroactive application.
- 817. What law governs.
- 818. Preemption.
- 819. Price cutting and sales below cost in general.
- 820. Motive, intent, purpose.

**(B) PRICE FIXING IN GENERAL.**

- 821. In general.
- 822. Horizontal arrangements.

**(C) RESALE PRICE MAINTENANCE.**

- 823. In general.
- 824. Per se illegality.
- 825. Agreements.
- 826. — In general.
- 827. — Unilateral acts and implied agreements.
- 828. Maximum retail price maintenance.
- 829. Exceptions.
- 830. — In general.
- 831. — Consignments.

**(D) PREDATORY PRICING.**

- 832. In general.
- 833. Cost determination; marginal or average variable cost.
- 834. Intent.
- 835. Probability of success.
- 836. — In general.
- 837. — Barriers to entry.
- 838. — Recoupment.

**29T. ANTITRUST AND TRADE REGULATION****(E) PRICE DISCRIMINATION.**

- 839. In general.
- 840. Primary line violations.
- 841. Secondary line violations.
- 842. Differential pricing.
- 843. — In general.
- 844. — Direct.
- 845. — Indirect.
- 846. Intent.
- 847. Effect on competition; competitive injury.
- 848. Commerce requirement.
- 849. Sales of commodities.
- 850. Like grade or quality.
- 851. Buyers' violations.
- 852. Commissions and other compensation to buyers; rebates, volume discounts.

**(F) COMMUNICATING PRICE INFORMATION TO COMPETITORS.**

- 860. In general.
- 861. Exchange of price information.
- 862. Price posting.

**(G) PARTICULAR INDUSTRIES OR BUSINESSES.**

- 865. In general.
- 866. Agricultural enterprises.
- 867. Computer and internet.
- 868. Entertainment.
- 869. — In general.
- 870. — Motion picture industry.
- 871. — Concerts and exhibitions.
- 872. Food and beverages; restaurants.
- 873. Insurance.
- 874. Intellectual property.
- 875. — In general.
- 876. — Copyrights.
- 877. — Patents.
- 878. — Trade secrets.
- 879. — Trademarks.
- 880. Investment.
- 881. Leases.
- 882. Manufacturers.
- 883. Medical services.
- 884. Medical supplies and pharmaceuticals.
- 885. Newspapers and other publications.
- 886. Office equipment.
- 887. Oil, gas and mining.
- 888. Regulated industries.

**X. ANTITRUST AND PRICES.(Cont'd)**

- 889. — In general.
- 890. — Utilities.
- 891. Sports.
- 892. Telecommunications.
- 893. — In general.
- 894. — Television and radio.
- 895. — Telephone.
- 896. Transportation.

**XI. ANTITRUST EXEMPTIONS AND DEFENSES.**

- 900. In general.
- 901. State action.
- 902. — In general.
- 903. — Political subdivisions; municipalities.
- 904. — Private parties.
- 905. Efforts to influence government action.
  - (1). In general.
  - (2). Petitioning government.
  - (3). Litigation; sham litigation.
- 906. Regulatory agencies; regulated industries.
- 907. Defenses.
- 908. — In general.
- 909. — Market concentration.
- 910. — Failing company doctrine.
- 911. — Barriers to entry.
- 912. — Potential entrant doctrine.
- 913. — Price discrimination.

**XII. ANTITRUST LAW AND TRADE AND PROFESSIONAL ASSOCIATIONS.**

- 920. In general.
- 921. Agricultural cooperatives.

**XIII. ANTITRUST LAW AND JOINT VENTURES.**

- 925. In general.
- 926. Intellectual property.

**XIV. ANTITRUST LAW AND NON-PROFITS.**

- 930. In general.

**XV. ANTITRUST LAW AND LABOR.**

- 935. In general.
- 936. Statutory exemptions in general.
- 937. Non-statutory exemptions in general.

**29T. ANTITRUST AND TRADE REGULATION****XV. ANTITRUST LAW AND LABOR.(Cont'd)**

- 938. Unions; employee organizations.
- 939. Collective bargaining agreements.
- 940. Collective action.
- 941. Employers and employer associations.

**XVI. ANTITRUST AND FOREIGN TRADE.**

- 945. In general.

**XVII. ANTITRUST ACTIONS, PROCEEDINGS, AND ENFORCEMENT.****(A) IN GENERAL.**

- 950. In general.
- 951. Administrative proceedings and investigations in general.
- 952. Persons entitled to seek administrative enforcement.
- 953. Administrative subpoena.
- 954. Civil investigative demand.
- 955. Cease and desist orders.

**(B) ACTIONS.**

- 958. In general.
- 959. Right of action; persons entitled to sue; standing; parties.
- 960. — In general.
- 961. — Interstate or foreign nature of transaction.
- 962. — Conditions precedent.
- 963. — Injury to business or property.
  - (1). In general.
  - (2). Causation.
  - (3). Particular cases.
- 964. — Competitors.
- 965. — Consumers.
- 966. — Corporations, shareholders, and officers.
- 967. — Indirect purchasers.
- 968. — Persons liable.
- 969. Jurisdiction and venue.
  - (1). In general.
  - (2). Personal jurisdiction.
  - (3). Venue.
- 970. Limitation of actions; time to sue.
- 971. Process.
- 972. Pleading.
  - (1). In general.
  - (2). Complaint.
  - (3). — In general.

**XVII. ANTITRUST ACTIONS, PROCEEDINGS, AND ENFORCEMENT.(Cont'd)**

- (4). — Conspiracy or combination.
- (5). — Injury to business or property.
- (6). Demurrer and motions in general.
- (7). Bill of particulars; more definite statement.
- (8). Issues, proof, and variance.
- 973. Evidence.
- 974. — In general.
- 975. — Admissibility.
- 976. — Presumptions and burden of proof.
- 977. — Weight and sufficiency.
  - (1). In general.
  - (2). Restraints and misconduct in general.
  - (3). Monopolization or attempt to monopolize.
  - (4). Mergers and acquisitions.
  - (5). Pricing.
- 978. Trial, hearing and determination.
- 979. — In general.
- 980. — Questions of law and fact.
- 981. — Instructions.
- 982. Damages and other relief.
- 983. — In general.
- 984. — Certainty.
- 985. — Particular items or elements.
- 986. — Punitive damages.
- 987. — Treble damages.
- 988. Costs and attorney fees.
- 989. — In general.
- 990. — Amount of fees.
- 991. — Costs.
- 992. Contribution among co-conspirators.
- 993. Forfeiture and seizure of property; divestiture.
- 994. Injunction.
- 995. — In general.
- 996. — Preliminary.

**XVIII. PENALTIES AND FINES.**

- 1005. In general.

**XIX. OFFENSES AND PROSECUTIONS.**

- 1010. In general.
- 1011. Constitutional and statutory provisions.
- 1012. Offenses.

**30. APPEAL AND ERROR**

**XIX. OFFENSES AND PROSECUTIONS.**(Cont'd)

- 1013. — In general.
- 1014. — Conspiracies or combinations.
- 1015. Prosecutions.
- 1016. — In general.
- 1017. — Indictment and information.
- 1018. — Evidence.
- 1019. — Trial.
- 1020. — Sentence.

**30. APPEAL AND ERROR**

**SUBJECTS INCLUDED**

- Review by superior tribunals of judicial action of inferior tribunals in general, and, more particularly, such review of decisions of courts of record in civil actions, by removal of the cause to the higher court by appeal or writ of error, or by hearing on a case made and reported or certified by the lower court, or on exceptions taken in the lower court
- Nature and scope of the remedy and of appellate jurisdiction in general
- Proceedings in the trial court to make objections to its action available on appeal, writ of error, etc.
- Proceedings to take and perfect appeals, sue out writs of error, etc., and effect thereof and of supersedeas or stay pending appeal, error, etc.
- Removal of cause, record, etc., to higher court
- Hearing and determination of appeals, writs of error, exceptions, etc., effect of decisions thereon, and proceedings on such decisions
- Liabilities on and enforcement of securities given to perfect appeal or to obtain supersedeas, stay, etc.

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Admiralty, appeals in, see ADMIRALTY
- Bills of exceptions, making and filing, see EXCEPTIONS, BILL OF

- Civil proceedings other than actions, review of decisions in, see CERTIORARI, HABEAS CORPUS, MANDAMUS, and other specific topics
- Costs on appeal, writ of error, etc., and damages for frivolous or vexatious appeals, etc., see COSTS
- Criminal prosecutions, review of proceedings in, see CRIMINAL LAW
- Federal appellate courts, jurisdiction and procedure, see FEDERAL COURTS
- Insolvent acts or bankruptcy acts, appeals and supervision of proceedings under, see BANKRUPTCY, CREDITORS' REMEDIES ¶1183
- Judgments, opening and vacating and correcting errors in on motion, writ of error coram nobis, or other proceeding in court in which they were rendered, see JUDGMENT
- Justices of the peace, appeals from decisions of, see JUSTICES OF THE PEACE
- Juvenile delinquency and youthful offenders, see INFANTS
- New trials, applications to trial courts for, see NEW TRIAL
- Particular courts, appellate jurisdiction of and proceedings for removing, reporting, certifying, etc., causes or questions from and to, see COURTS
- Particular forms of relief, review of decisions in actions for, see DECLARATORY JUDGMENT, DIVORCE, and other specific topics
- Rehearing and bills of review in suits in equity, see EQUITY
- Review of judgments not subjects of appeal or writ of error, etc., or for causes arising subsequently to the decision or otherwise not grounds of appeal, etc., see CERTIORARI, REVIEW, AUDITA QUERELA
- Support and custody of children, see CHILD SUPPORT and CHILD CUSTODY

- I. NATURE AND FORM OF REMEDY, ¶1-16.
- II. NATURE AND GROUNDS OF APPELLATE JURISDICTION, ¶17-23.
- III. DECISIONS REVIEWABLE, ¶24-135.
  - (A) COURTS AND OTHER TRIBUNALS SUBJECT TO REVIEW, ¶24-32.



**30. APPEAL AND ERROR****III. DECISIONS REVIEWABLE—Cont'd**

- (B) NATURE OF SUBJECT-MATTER AND CHARACTER OF PARTIES, ¶33–44.
- (C) AMOUNT OR VALUE IN CONTROVERSY, ¶45–65.
- (D) FINALITY OF DETERMINATION, ¶66–84.
- (E) NATURE, SCOPE, AND EFFECT OF DECISION, ¶85–122.
- (F) MODE OF RENDITION, FORM, AND ENTRY OF JUDGMENT OR ORDER, ¶123–135.

**IV. RIGHT OF REVIEW, ¶136–168.**

- (A) PERSONS ENTITLED, ¶136–152.
- (B) ESTOPPEL, WAIVER, OR AGREEMENTS AFFECTING RIGHT, ¶153–168.

**V. PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW, ¶169–320.**

- (A) ISSUES AND QUESTIONS IN LOWER COURT, ¶169–179.
- (B) OBJECTIONS AND MOTIONS, AND RULINGS THEREON, ¶181–247.
- (C) EXCEPTIONS, ¶248–280.
- (D) MOTIONS FOR NEW TRIAL, ¶281–305.
- (E) CASES AND QUESTIONS RE-SERVED OR CERTIFIED, ¶307–320.

**VI. PARTIES, ¶321–336.2.****VII. TRANSFER OF CAUSE, ¶337–435.**

- (A) TIME OF TAKING PROCEEDINGS, ¶337–357.
- (B) PETITION OR PRAYER, ALLOWANCE, AND CERTIFICATE OR AFFIDAVIT, ¶358–368.
- (C) PAYMENT OF FEES OR COSTS, AND BONDS OR OTHER SECURITIES (OBSOLETE, SEE COSTS, FEES, AND SANCTIONS IV), ¶369–395.
- (D) WRIT OF ERROR, CITATION, OR NOTICE, ¶396–430.
- (E) ENTRY, DOCKETING, AND APPEARANCE, ¶431–435.

**VIII. EFFECT OF TRANSFER OF CAUSE OR PROCEEDINGS THEREFOR, ¶436–457.**

- (A) POWERS AND PROCEEDINGS OF LOWER COURT, ¶436–452.
- (B) JURISDICTION ACQUIRED BY APPELLATE COURT, ¶454–457.

**IX. SUPERSEDEAS OR STAY OF PROCEEDINGS, ¶458–492.****X. RECORD, ¶493–717.****X. RECORD—Cont'd**

- (A) MATTERS TO BE SHOWN, ¶493–515.
- (B) SCOPE AND CONTENTS, ¶516–543.
- (C) NECESSITY OF BILL OF EXCEPTIONS, CASE, OR STATEMENT OF FACTS, ¶544–555.
- (D) CONTENTS, MAKING, AND SETTLEMENT OF CASE OR STATEMENT OF FACTS, ¶556–578.
- (E) ABSTRACTS, ¶579–592.2.
- (F) MAKING, FORM, AND REQUIREMENTS OF TRANSCRIPT OR RETURN, ¶593–611.
- (G) AUTHENTICATION AND CERTIFICATION, ¶612–618.
- (H) TRANSMISSION AND FILING, ¶619–630.
- (I) PRINTING AND SERVICE OF COPIES, ¶631–633.
- (J) DEFECTS, OBJECTIONS, AMENDMENTS, AND CORRECTIONS, ¶634–661.
- (K) CONCLUSIVENESS AND EFFECT, ¶662–665.
- (L) IMPEACHMENT OR CONTRADICTION, ¶666–670.
- (M) QUESTIONS PRESENTED FOR REVIEW, ¶671–711.
- (N) MATTERS NOT APPARENT OF RECORD, ¶712–717.

**XI. ASSIGNMENT OF ERRORS, ¶718–754.****XII. BRIEFS, ¶755–774.****XIII. DISMISSAL, WITHDRAWAL, OR ABANDONMENT, ¶775–807.****XIV. DOCKETS, CALENDARS, AND PROCEEDINGS, PRELIMINARY TO HEARING, ¶808–814.****XV. HEARING, ¶815–835.**

- (A) IN GENERAL, ¶815–828.
- (B) REHEARING, ¶829–835.

**XVI. REVIEW, ¶3001–4150.**

- (A) IN GENERAL, ¶3001–3010.
- (B) CONSIDERATIONS PRELIMINARY TO CONDUCTING REVIEW, ¶3011–3080.
  - 1. IN GENERAL, ¶3011–3020.
  - 2. NECESSITY OF DETERMINATION BY REVIEWING COURT, ¶3021–3050.
  - 3. MATTERS BROUGHT UP WITH RULING APPEALED FROM, ¶3051–3080.
- (C) PERSONS ENTITLED TO ASSERT ARGUMENTS ON REVIEW, ¶3081–3130.

## 30. APPEAL AND ERROR

## XVI. REVIEW—Cont'd

## (C) PERSONS ENTITLED TO ASSERT ARGUMENTS ON REVIEW—Cont'd

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2. ESTOPPEL AND WAIVER; INVITED ERROR, ⚭3101–3130.

## (D) SCOPE AND EXTENT OF REVIEW, ⚭3131–3800.

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2. PARTICULAR SUBJECTS OF REVIEW IN GENERAL, ⚭3161–3190.
3. PROCEDURAL MATTERS IN GENERAL, ⚭3191–3270.
4. PLEADING, ⚭3271–3300.
5. SET-OFF, COUNTERCLAIM, AND CROSS-CLAIM, ⚭3301–3310.
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7. TRIAL, ⚭3341–3360.
8. EVIDENCE AND WITNESSES IN GENERAL, ⚭3361–3400.
9. VERDICT AND FINDINGS IN GENERAL, ⚭3401–3440.
10. SUFFICIENCY OF EVIDENCE, ⚭3441–3500.
11. VERDICT, FINDINGS, AND SUFFICIENCY OF EVIDENCE: ADDITIONAL CONSIDERATIONS, ⚭3501–3540.
12. JUDGMENT IN GENERAL, ⚭3541–3550.
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14. TAKING CASE OR QUESTION FROM JURY; JUDGMENT AS A MATTER OF LAW, ⚭3561–3590.
15. RECONSIDERATION OR REHEARING IN GENERAL, ⚭3591–3600.
16. SETTING ASIDE VERDICT; NEW TRIAL, ⚭3601–3630.
17. RELIEF FROM JUDGMENT OR ORDER, ⚭3631–3640.
18. REMEDIAL MATTERS IN GENERAL, ⚭3641–3660.
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20. MONETARY RELIEF, ⚭3671–3710.
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## (E) MATERIAL CONSIDERED ON REVIEW, ⚭3801–3860.

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## XVI. REVIEW—Cont'd

## (E) MATERIAL CONSIDERED ON REVIEW—Cont'd

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2. PARTICULAR MATTERS AND RULINGS, ⚭3881–4000.
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## (G) TRIAL ON REVIEW, ⚭4031–4060.

## (H) THEORY AND GROUNDS OF DECISION BELOW AND ON REVIEW, ⚭4061–4080.

## (I) RULINGS BELOW AS LAW OF THE CASE ON REVIEW, ⚭4081–4090.

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10. SUBMISSION OF ISSUES OR QUESTIONS TO JURY, ⚭4421–4430.
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14. CONCLUSIONS OF LAW, ⚭4501–4510.
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16. TAKING CASE OR QUESTION FROM JURY; JUDGMENT AS A MATTER OF LAW, ⚭4521–4530.
17. RECONSIDERATION OR REHEARING, ⚭4531–4540.
18. RELIEF FROM JUDGMENT OR ORDER, ⚭4541–4550.
19. REMEDIAL MATTERS, ⚭4551–4570.
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1. IN GENERAL, ⚭4791–4800.
2. DECISION OF REVIEWING COURT AS LAW OF THE CASE IN LOWER COURT, ⚭4801–4810.

**XVIII. DETERMINATION AND DISPOSITION OF CAUSE—Cont'd****(J) COURSE AND CONDUCT OF FURTHER PROCEEDINGS IN LOWER COURT, ⚭4811–4840.****(K) JURISDICTION AND PROCEEDINGS OF REVIEWING COURT AFTER REMAND, ⚭4841–4850.****XIX. LIABILITIES ON BONDS AND UNDERTAKINGS, ⚭4851–4875.****I. NATURE AND FORM OF REMEDY.**

1. Origin, nature, and scope of remedies in general.
2. Statutory provisions and remedies.
3. Proper mode of review.
- 3.1. — In general.
4. — Appeal.
5. — Writ of error; restricted appeal.
6. — Exceptions.
7. — Writ of supersedeas.
8. — Reservation or certification of cases or questions.
9. Existence of other remedy in lower court.
10. Existence of other remedy for review.
11. Right to different remedies in same case.
12. Election between remedies.
13. Pendency of another proceeding.
14. Successive appeals and cross-appeals or other proceedings.
- (5). In general.
- (1). Dismissal, abandonment, or withdrawal of first proceeding.
- (2). Determination of first proceeding.
- (3). Different parties to proceeding.
- (4). Cross-appeals or writs of error.
15. Joinder of proceedings, and double appeals or other proceedings.
16. Separate appeals in related causes.

**II. NATURE AND GROUNDS OF APPELLATE JURISDICTION.**

17. Nature and source.
18. Grounds and extent in general.
19. Existence of actual controversy.
20. Jurisdiction of lower court.
21. Consent of parties.
22. Waiver of objections.
23. Determination of questions of jurisdiction in general.

**30. APPEAL AND ERROR****III. DECISIONS REVIEWABLE.****(A) COURTS AND OTHER TRIBUNALS  
SUBJECT TO REVIEW.**

- 24. Judicial character of tribunal.
- 25. Courts of original jurisdiction in general.
- 30. Judges and judicial officers.
- 31. Special tribunals, boards, and officers exercising judicial functions.
- 32. Intermediate courts.

**(B) NATURE OF SUBJECT-MATTER AND  
CHARACTER OF PARTIES.**

- 33. Constitutional questions in general.
- 34. Validity and construction of statutes or ordinances.
- 35. Franchises and matters of public interest.
- 36. Revenue.
- 37. States, political divisions, or officers as parties.
- 38. Title to real property.
- 40. Probate cases, and claims against decedents' estates.
- 41. Nature or form of action or proceeding.
  - (1). In general.
  - (2). Suits in equity in general.
  - (3). Injunction and receiver.
  - (4). Actions triable by jury.
  - (5). Civil or criminal.
- 42. Important or doubtful questions.
- 43. Cases in intermediate courts.
- 44. Cases originating in inferior courts.

**(C) AMOUNT OR VALUE IN CONTROVERSY.**

- 45. Cases subject to pecuniary limitations.
- 46. Requisite amount or value.
- 47. Amount claimed.
  - (1). In general.
  - (2). Amount claimed or value of property.
  - (3). Amount claimed or amount recovered.
- 48. Value of property or right claimed.
- 49. Amount or value actually involved.
- 50. — In general.
  - (1). In general.
  - (2). Extent of appellant's interest.
- 51. — Effect of set-off or counterclaim.
- 52. — Appeal as to part of subject-matter.
- 53. — Determination of amount.
- 54. Interest accrued.

**III. DECISIONS REVIEWABLE.(Cont'd)**

- 55. Amount or value of recovery.
  - 56. — In general.
  - 57. — Effect of counterclaim.
  - 58. — Interest on recovery.
  - 59. — Costs and attorney fees.
  - 60. — Collateral effect of judgment.
  - 61. Aggregated claims, interests, or judgments.
  - 62. Reduction by amendment or remission.
  - 63. Reduction by payment or other satisfaction.
  - 64. Cases in intermediate courts.
  - 65. Cases originating in inferior courts.
- (D) FINALITY OF DETERMINATION.**
- 66. Necessity of final determination.
  - 67. Interlocutory and intermediate decisions.
  - 68. — In general.
  - 69. — Nature or form of action or proceeding.
    - (1). In general.
    - (2). Probate cases.
    - (3). Partition proceedings.
    - (4). Condemnation proceedings.
  - 70. — Nature and scope of decision.
    - (.5). In general.
    - (1). Relating to parties or process.
    - (2). On demurrer or exceptions.
    - (3). On motions relating to pleadings.
    - (4). Relating to witnesses, depositions, evidence, or discovery.
    - (5). On motion for dismissal or non-suit.
    - (6). Relating to time, place, or conduct of trial.
    - (7). Relating to reference of cause.
    - (8). On motion for judgment.
    - (9). On motion for new trial.
  - 71. — Affecting provisional remedies.
    - (.5). In general.
    - (1). Sequestration.
    - (2). Attachment and garnishment.
    - (3). Injunction.
    - (4). Receiver.
    - (5). Replevin.
    - (6). Arrest and bail.
  - 72. — Affecting collateral matters and proceedings.

**30. APPEAL AND ERROR****III. DECISIONS REVIEWABLE.(Cont'd)**

- 73. — Appealable judgments and orders.
  - (1). In general.
  - (2). Causing irreparable injury.
- 74. — Effect of right to review on appeal from final judgment.
- 75. Final judgments or decrees.
- 76. — In general.
  - (1). In general.
  - (2). Necessity of entry of judgment.
  - (3). Pendency of motion for new trial.
- 77. — Nature or form of action or proceeding.
  - (1). In general.
  - (2). Probate proceedings.
- 78. — Nature and scope of decision.
  - (1). In general.
  - (2). Relating to parties and process.
  - (3). Rulings on demurrer or motion relating to pleadings.
  - (4). Judgment of dismissal or nonsuit.
  - (5). Relating to reference of cause.
  - (6). On motion for new trial or in arrest of judgment.
  - (7). Relating to costs.
- 79. — Finality as to all parties.
  - (1). In general.
  - (2). Dismissal of one or more parties.
- 80. — Determination of controversy.
  - (1). In general.
  - (2). Conditional judgment.
  - (3). Necessity for further action or order in general.
  - (4). Necessity for accounting or inquest of damages.
  - (5). Judgment ordering sale of property in general.
  - (6). Determination of part of controversy.
- 81. — Collateral matters and proceedings.
- 82. Orders after judgment.
  - (1). In general.
  - (2). Amendment of judgment.
  - (3). Opening or vacating judgment.
  - (4). Relating to costs.
  - (5). Relating to execution or judicial sale.
- 83. Final orders in special proceedings.
- 84. Decisions of intermediate courts.

**III. DECISIONS REVIEWABLE.(Cont'd)**

- (1). In general.
  - (2). Affirmance of order or judgment.
  - (3). Reversal of order or judgment.
  - (4). Remand with directions.
  - (5). Final orders in special proceedings.
- (E) NATURE, SCOPE, AND EFFECT OF DECISION.**
- 85. Judicial nature of decision.
  - 86. Discretionary action.
  - 86.1. — In general.
  - 87. — Matters resting in discretion.
    - (.5). In general.
    - (1). Setting off judgments.
    - (2). Orders in probate.
    - (3). Relating to parties and pleading.
    - (4). Relating to provisional remedies, dismissal and nonsuit.
    - (5). Relating to place, time, or conduct of trial, and to discovery and reference.
    - (6). On motion for new trial or rehearing.
    - (7). Opening or vacating judgment or order.
    - (8). Relating to execution or judicial sale.
    - (9). Proceedings for review.
    - (10). Relating to costs.
  - 88. — Refusal to exercise discretion.
  - 89. — Abuse of discretion.
  - 90. Involving merits.
  - 91. Affecting substantial rights.
    - (1). In general.
    - (2). Orders relating to assignments.
    - (3). Orders in special proceedings.
    - (4). Orders on summary application after judgment.
    - (5). Relating to provisional remedies.
    - (6). On motion relating to parties, process, or pleadings.
    - (7). Relating to time, place, or conduct of trial.
    - (8). Amending, opening, or vacating judgment or order.
    - (9). Relating to execution or judicial sale.
    - (10). In proceedings for review.
    - (11). Relating to costs.

**30. APPEAL AND ERROR****III. DECISIONS REVIEWABLE.(Cont'd)**

- 92. Adjudicating principles of cause.
- 93. Determining action and preventing judgment.
- 94. Assuming or refusing jurisdiction.
- 95. Relating to parties or process.
- 96. Relating to provisional remedies.
- 97. — In general.
- 98. — Arrest and bail.
- 99. — Attachment and garnishment.
- 100. — Injunction.
  - (1). In general.
  - (2). Continuing, modifying, vacating, or dissolving.
  - (3). Violation of injunction.
- 101. — Receiver.
  - (1). In general.
  - (2). Decisions in receivership proceedings.
- 102. On demurrer.
- 103. On motion relating to pleadings.
- 104. Relating to witnesses, depositions, affidavits or discovery.
- 105. Dismissal, nonsuit, or direction of verdict.
- 106. Relating to place, time, or conduct of trial.
- 107. Relating to reference of cause.
- 108. Relating to verdict or findings.
- 109. On motion for judgment notwithstanding verdict.
- 110. On motion for new trial.
- 111. Partial judgment or decision.
- 112. Void judgment or order.
- 113. Opening or vacating judgment or order.
  - (1). In general.
  - (2). Appealability of original judgment or order.
  - (3). Judgment by default or decree pro confesso.
  - (4). Judgment or order of dismissal or nonsuit.
  - (5). Amendment of judgment or order.
- 114. Confirming or carrying out or enforcing previous decision.
- 115. Relating to execution or judicial sale.
- 116. In proceedings supplementary to execution.
- 117. In proceedings for review.

**III. DECISIONS REVIEWABLE.(Cont'd)**

- 118. In proceedings after decision of appellate court.
- 119. Relating to costs.
- 120. Decisions of intermediate courts.
  - (.5). In general.
  - (1). Nature and scope of decision of trial court.
  - (2). Decisions on appeal in general.
  - (3). Discretionary action.
  - (4). Involving merits.
  - (5). Affecting substantial rights.
  - (6). Determining action and preventing judgment.
  - (7). In proceedings for transfer of cause.
  - (8). Questions of law or fact.
  - (9). Dismissal, affirmance, or reversal.
- 122. Proceedings for review of part of judgment or order.

**(F) MODE OF RENDITION, FORM, AND ENTRY OF JUDGMENT OR ORDER.**

- 123. Necessity of formal judgment or order.
- 124. By confession.
- 125. On consent, offer, or admission.
- 126. On submission of controversy or agreed case.
- 127. By default.
- 128. On ex parte proceeding.
- 129. On motion or summary proceeding.
- 130. On trial of issues.
- 131. On proceedings at chambers or in vacation.
- 132. Pro forma judgment or order.
- 133. Order for judgment.
- 134. Entry of judgment or order.
  - (.5). In general.
  - (1). Necessity.
  - (2). Sufficiency.
- 135. Findings and conclusions of intermediate courts.

**IV. RIGHT OF REVIEW.****(A) PERSONS ENTITLED.**

- 136. Nature and grounds of right.
- 137. Parties of record.
- 138. — In general.
- 139. — Nominal and unnecessary parties.

**30. APPEAL AND ERROR****IV. RIGHT OF REVIEW.(Cont'd)**

- 140. — Parties not served with process.
  - 141. — Representative or official capacity.
  - 142. — States, political divisions, boards, or officers.
  - 143. — Interveners and claimants.
  - 144. — Effect of dismissal as to parties.
  - 145. — Separate appeals by different parties.
  - 146. — Appeals between coparties.
  - 147. Privy with parties.
  - 148. Persons other than parties or privies.
  - 149. Interveners for purpose of appeal.
  - 150. Interest in subject-matter.
    - (1). In general.
    - (2). Transfer or devolution of interest.
    - (3). Representative or official capacity.
    - (4). Political divisions and officers.
    - (5). Garnishees.
    - (6). Creditors and sureties.
  - 151. Parties or persons injured or aggrieved.
    - (1). In general.
    - (2). Who are “aggrieved” in general.
    - (3). Representative or official capacity.
    - (4). Political divisions, boards, or officers.
    - (5). Prevailing parties.
    - (6). Parties or persons aggrieved by judgments against others.
  - 152. Decisions of intermediate courts.
- (B) ESTOPPEL, WAIVER, OR AGREEMENTS AFFECTING RIGHT.**
- 153. Inconsistent position or action in general.
  - 154. Recognition of or acquiescence in decision.
    - (5). In general.
    - (1). What constitutes recognition or acquiescence in general.
    - (2). Pleading over or amendment of pleadings.
    - (3). Proceeding with trial or submission to new trial.
    - (4). Consent to judgment or order.
    - (5). Pleading judgment in bar.
  - 155. Entry by appellant of judgment or order.
  - 156. Compliance with judgment or order.
  - 157. — In general.
  - 158. — Payment of or on judgment.

**IV. RIGHT OF REVIEW.(Cont'd)**

- (1). In general.
- (2). Involuntary payment or protest.
- 159. — Payment of costs.
- 160. Acceptance of benefits.
- 161. — In general.
- 162. — Payment of or on judgment.
  - (1). In general.
  - (2). Separate judgments or parts of judgment.
  - (3). Acceptance of sum absolutely due or admitted to be due.
- 163. — Payment of costs.
- 164. — Enforcement of judgment or order.
- 165. Pursuing other remedy.
- 166. Release of errors.
- 167. Agreements and stipulations.
- 168. Waiver of objections to right of appeal.

**V. PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW.****(A) ISSUES AND QUESTIONS IN LOWER COURT.**

- 169. Necessity of presentation in general.
- 170. Nature or subject-matter of issues or questions.
  - (1). In general.
  - (2). Constitutional questions.
- 171. Nature and theory of cause.
  - (1). In general; adhering to theory pursued below.
  - (2). Nature or form of remedy.
  - (3). Adhering to pleadings as construed below.
- 172. Grounds of action or relief.
  - (1). In general; asserting new or inconsistent grounds.
  - (2). Different acts of negligence.
  - (3). Relief not asked below.
- 173. Grounds of defense or opposition.
  - (1). In general; asserting new defense or grounds of opposition.
  - (2). Nature or subject-matter in general.
  - (3). Asserting inconsistent ground of defense.
  - (4). Asserting conditions precedent to bringing suit.



**30. APPEAL AND ERROR****V. PRESENTATION AND RESERVATION  
IN LOWER COURT OF GROUNDS  
OF REVIEW.(Cont'd)**

- (5). Raising objections to plaintiff's right or title.
- (6). Asserting invalidity of contract or other instrument.
- (7). Authority of agent.
- (9). Ratification, estoppel, waiver, and res judicata.
- (10). Time of bringing suit, limitations, and laches.
- (11). Objections to or defense of set-off.
- (12). Asserting rescission, discharge, settlement, or payment.
- (13). Actions for personal injuries.
- (14). Actions on insurance policies.
- (16). Actions on building contracts and to enforce mechanics' liens.
- 174. Capacity or right to sue or defend.
- 175. Scope of issues or questions.
- 176. Facts admitted or conceded in lower court.
- 177. Incidental and collateral matters.
- 179. Sufficiency of presentation of questions.
  - (1). In general.
  - (2). Failure to offer evidence.
  - (3). Matters not submitted to jury and failure to ask instructions.
  - (4). Constitutional questions.
- (B) OBJECTIONS AND MOTIONS,  
AND RULINGS THEREON.**
- 181. Necessity of objections in general.
- 182. Nature or form of remedy.
- 183. — In general.
- 184. — Remedy at law or in equity.
- 185. Organization and jurisdiction of lower court.
  - (1). In general.
  - (2). Jurisdictional amount.
  - (3). Disqualification of judge.
- 186. Venue.
- 187. Parties.
  - (1). In general.
  - (2). Misjoinder of parties.
  - (3). Nonjoinder of parties.
  - (4). New parties and change of parties.

**V. PRESENTATION AND RESERVATION  
IN LOWER COURT OF GROUNDS  
OF REVIEW.(Cont'd)**

- 188. Process and notice.
- 189. Motions and other incidental and collateral proceedings.
  - (1). In general.
  - (2). Objections as to affidavits and bonds.
  - (3). Dismissal or nonsuit and striking from docket.
  - (4). Discontinuance as to deceased party and revivor.
  - (5). Continuance.
- 190. Proceedings relating to provisional remedies.
  - (.5). In general.
  - (1). Attachment, garnishment, and sequestration.
  - (2). Injunction.
  - (3). Receivers.
- 191. Pleading.
- 192. — In general.
- 192.1. — Objections to sufficiency.
- 192.2. — Signature, verification, and filing.
- 192.4. — Bill of particulars.
- 193. — Objections to declaration, complaint, or petition.
  - (1). In general.
  - (2). Misjoinder and splitting of causes.
  - (4). Sufficiency of particular allegations.
  - (5). Omission of averments.
  - (6). Certainty, definiteness, and particularity.
  - (7). Description of property.
  - (9). Failure to state cause of action.
- 194. — Objections to plea or answer, or to subsequent pleadings.
  - (1). In general.
  - (2). Denials.
  - (3). Admissions by answer or failure to answer.
  - (4). Set-off, counterclaim, and cross-complaint.
  - (5). Replication or reply.
  - (6). Demurrer or exception and rulings thereon.
- 195. — Amendments and supplemental pleadings.



**30. APPEAL AND ERROR****V. PRESENTATION AND RESERVATION  
IN LOWER COURT OF GROUNDS  
OF REVIEW.(Cont'd)**

- 196. — Motions.
- 197. — Issues, proof, and variance.
  - (1). In general.
  - (2). Scope of issues in general.
  - (3). Variance between declaration and proof in general.
  - (6). Damages.
  - (7). Variance between answer and proof.
- 198. Reference of cause or question.
- 199. Proceedings preliminary to trial or hearing.
- 200. Qualifications and selection, impaneling and oath of jurors.
- 201. Mode and conduct of trial or hearing.
  - (1). In general.
  - (2). Remarks and conduct of judge.
- 202. Evidence and witnesses.
- 203. — In general.
- 203.1. — Burden of proof.
- 203.2. — Depositions.
- 203.3. — Competency of witnesses.
- 203.4. — Impeachment.
- 204. — Admission of evidence.
  - (1). In general.
  - (2). Nature of evidence in general.
  - (3). Secondary and parol evidence.
  - (4). Documents in general.
  - (5). Deeds, accounts, and letters.
  - (6). Ordinances.
  - (7). Opinion evidence and hypothetical questions.
- 205. — Exclusion of evidence.
- 206. — Reception of evidence.
- 206.2. — Examination of witnesses.
- 207. Arguments and conduct of counsel.
- 208. Sufficiency of evidence.
- 209. — In general.
- 209.1. — Necessity of objection.
- 209.2. — Want of proof of specific facts.
- 209.3. — Competency of evidence.
- 210. — Taking case or question from jury in general.
- 211. — Dismissal or nonsuit.
- 212. — Direction of verdict.
- 213. Submission of case or question to jury.
- 214. Instructions.

**V. PRESENTATION AND RESERVATION  
IN LOWER COURT OF GROUNDS  
OF REVIEW.(Cont'd)**

- 214.1. — In general.
- 215. — Objections in general.
  - (.5). In general.
  - (1). Necessity of objection in general.
  - (2). Instructions referring to evidence and matters of fact.
  - (3). Applicability to pleadings and evidence.
  - (4). Instructions assuming facts or on weight of evidence.
- 216. — Requests and failure to give instructions.
  - (1). In general.
  - (2). Further or more specific instructions.
  - (3). Correcting erroneous instructions.
  - (4). Requesting erroneous instruction.
  - (5). Compliance with or refusal of requests.
  - (6). Objection to refusal of requested charge.
  - (7). Sufficiency of requests and questions raised.
- 217. Custody and conduct of jury.
- 218. Verdict and findings by jury.
- 218.1. — In general; general verdict.
- 218.2. — Special interrogatories and findings.
  - (1). In general.
  - (2). Nature of error or defect.
  - (3). Nature of interrogatory or finding.
  - (3.1). — In general.
  - (4). — Negligence.
  - (5). Requests and failure to submit interrogatories or issues.
  - (5.1). — In general.
  - (6). — Further or more specific interrogatories or findings.
  - (7). — Nature of interrogatories or issues.
  - (8). — Correcting erroneous interrogatories or issues.
  - (9). — Objection to refusal of requested interrogatory or issue.
  - (10). — Sufficiency of requests.
- 219. Trial, decision, and findings by court.
  - (.5). In general.

## 30. APPEAL AND ERROR

V. PRESENTATION AND RESERVATION  
IN LOWER COURT OF GROUNDS  
OF REVIEW.(Cont'd)

- (1). Hearing and determination of cause.
- (2). Findings of fact and conclusions of law.
- 220. Hearing, findings, and report by referee, commissioner, or auditor.
- 221. Amount of recovery or extent of relief.
- 222. Motion in arrest or for new trial or rehearing.
- 223. Judgment.
- 224. Vacation or modification of judgment.
- 225. Execution and enforcement of judgment.
- 226. Costs.
  - (1). In general.
  - (2). Fees.
- 227. Proceedings for review.
- 228. Objections to appeal to intermediate court.
- 230. Necessity of timely objection.
- 231. Necessity of specific objection.
  - (1). In general.
  - (2). Objections to pleadings and variance.
  - (3). Objections to evidence in general.
  - (4). Depositions.
  - (5). Nature of evidence in general.
  - (6). Opinion evidence and hypothetical questions.
  - (7). Reception of evidence, and competency and examination of witnesses.
  - (8). Sufficiency of evidence.
  - (9). Instructions.
- 232. Scope and effect of objection.
  - (5). In general.
  - (1). Objections to pleading.
  - (2). Objections to evidence and witnesses.
  - (3). Instructions.
- 233. Mode of making objection in general.
  - (1). In general.
  - (2). Repetition of objections.
- 234. Necessity of motion presenting objection.
- 235. — In general.
- 236. — In proceedings before trial or hearing.

V. PRESENTATION AND RESERVATION  
IN LOWER COURT OF GROUNDS  
OF REVIEW.(Cont'd)

- (1). In general.
- (2). Objections to pleadings.
- 237. — At trial or hearing.
  - (1). In general.
  - (2). Objections to evidence and witnesses in general.
  - (3). Taking case or question from jury in general.
  - (4). Dismissal or nonsuit.
  - (5). Direction of verdict.
  - (6). Objections to verdict and findings.
- 238. — As to judgment, or modification or vacation of judgment.
  - (1). In general.
  - (2). Motion for judgment notwithstanding verdict.
  - (3). Motion in arrest.
  - (4). Motion to modify judgment or order.
  - (5). Motion to correct clerical errors.
  - (6). Motion to vacate judgment or order.
  - (7). Review of judgment by confession or default.
  - (8). Method of objecting to time of rendering judgment.
- 239. — As to costs.
- 240. — Review of specific questions and particular decisions.
- 241. — Sufficiency and scope of motion.
- 242. Necessity of ruling on objection or motion.
  - (1). In general.
  - (2). Rulings on motions.
  - (3). Rulings on demurrer or plea in abatement.
  - (4). Rulings on evidence in general.
  - (5). Reservation of rulings.
- 243. Effect of failure to make objection.
- 243.1. — In general.
- 244. — Objections deemed to have been made.
- 245. — Want of opportunity to object.
- 247. Adding to or changing grounds of objection.

**30. APPEAL AND ERROR****(C) EXCEPTIONS.**

- 248. Necessity in general.
- 249. Necessity on trial by court or referee in general.
- 250. Necessity in equitable actions.
- 251. Review of questions of law in general.
- 252. Review of rulings as to pleadings.
- 257. Review of rulings or orders before trial or hearing.
- 258. Review of proceedings at trial.
- 259. — In general.
- 260. — Rulings as to evidence.
  - (1). In general.
  - (2). Exclusion of evidence.
  - (3). Reception of evidence and examination of witnesses.
  - (4). On trial by court.
- 261. — Rulings as to arguments and conduct of counsel.
- 262. — Rulings as to submission of case or question to jury.
  - (1). In general.
  - (2). Taking case or question from jury.
- 263. — Instructions, and failure or refusal to give instructions.
  - (1). In general.
  - (3). Failure or refusal to give instructions.
  - (7). Error of law.
  - (8). Instructions not supported by evidence.
- 264. Exceptions to verdict or findings by jury.
- 265. Exceptions to decision or findings by court.
  - (1). In general.
  - (2). Exceptions to and review of conclusions of law.
- 266. Exceptions to rulings, report, or findings of referee, commissioner, or auditor.
  - (1). In general.
  - (2). Decision on report of referee or master.
- 267. Exceptions to judgment.
  - (1). In general.
  - (2). Matters appearing on face of record.
- 268. Review of sufficiency of evidence to sustain verdict, findings, or judgment.
- 269. Review of amount of recovery or relief awarded.

**V. PRESENTATION AND RESERVATION  
IN LOWER COURT OF GROUNDS  
OF REVIEW.(Cont'd)**

- 270. Exceptions to rulings and orders after trial or judgment.
  - (1). In general.
  - (2). Motion for new trial or venire de novo.
  - (3). Vacation or modification of judgment.
  - (4). Costs.
- 271. Review of decisions of intermediate courts.
- 272. Necessity of timely exception.
  - (1). In general.
  - (2). Exceptions to instructions.
  - (3). Exceptions to decision, verdict, findings, or judgment.
- 273. Necessity of specific exception.
  - (1). In general.
  - (2). Rulings as to pleadings.
  - (3). Proceedings at trial in general.
  - (4). Rulings as to evidence.
  - (5). Instructions.
  - (9). Decision or findings by court, referee, commissioner, or auditor.
  - (10). Verdict or judgment.
  - (11). Sufficiency of evidence and amount of recovery.
  - (12). Rulings and orders after trial or judgment.
- 274. Scope and effect.
  - (1). In general.
  - (3). Rulings as to evidence.
  - (4). Submission of case or question to jury.
  - (5). Instructions.
  - (6). Decision or findings by court, referee, commissioner, or auditor.
  - (7). Verdict or judgment.
- 275. Necessity of ruling on exception.
- 276. Effect of failure to take proper exception.
  - 276.1. — In general.
- 277. — Exception deemed to have been taken.
- 278. — Agreements to give benefit of exception.
- 279. — Relief against failure to except.
- 280. Waiver of exceptions.

**30. APPEAL AND ERROR****(D) MOTIONS FOR NEW TRIAL.**

- 281. Necessity in general.
  - (1). In general.
  - (2). Effect of statute dispensing with necessity of motion.
  - (3). Special proceedings and provisional remedies.
- 282. Necessity on trial by court or referee in general.
- 283. Necessity in equitable actions.
- 284. Review of questions of law in general.
- 285. Review of rulings as to pleadings.
- 286. Review of rulings or orders before trial or hearing.
- 287. Review of proceedings at trial.
- 288. — In general.
- 289. — Rulings as to evidence.
- 290. — Rulings as to arguments and conduct of counsel.
- 291. — Rulings as to submission of case or question to jury.
- 292. — Instructions, and failure or refusal to give instructions.
- 293. Review of objections to verdict, findings, or judgment.
- 294. Review of sufficiency of evidence to sustain verdict, findings, or judgment.
  - (1). In general.
  - (2). On trial by court or referee or in equitable actions.
- 295. Review of amount of recovery or relief awarded.
- 296. Review of decisions on motions after trial or judgment.
- 297. Review of decisions of intermediate courts.
- 298. Motion on grounds covered by exceptions or motion in arrest.
- 299. Review on direct bill of exceptions.
- 300. Necessity of timely motion.
- 301. Necessity of statement of grounds.
- 302. Sufficiency and scope of statement of grounds.
  - (1). In general.
  - (2). Waiver by failure to argue or present to court.
  - (3). Rulings as to evidence.
  - (4). Instructions, and failure or refusal to give instructions.

**V. PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW.(Cont'd)**

- (5). Objections to verdict, findings, or judgment.
- (6). Sufficiency of evidence and amount of recovery.
- 303. Authentication of statement of grounds.
- 304. Necessity of ruling or order on motion.
- 305. Necessity and sufficiency of exception to decision.

**(E) CASES AND QUESTIONS RESERVED OR CERTIFIED.**

- 307. Nature and grounds of reservation or certification.
  - 307.1. — In general.
- 308. — Nature of questions in general.
- 309. — Constitutional questions.
- 310. — Novel or important questions.
- 311. — Division of opinion or dissent in lower court.
- 312. — Necessity of decision by trial court.
- 314. Time for reservation or certification.
- 315. Proceedings to procure certificate.
- 316. Requisites and sufficiency of reservation or certificate.
- 318. Verdict or judgment subject to opinion of appellate court.
- 319. Exceptions ordered to be heard in appellate court in first instance.
- 320. Report of case or of evidence for consideration by appellate court.
  - (1). In general.
  - (2). Status of case and matters reportable.
  - (3). Request for report; draft report.
  - (4). Making or allowance of report; discretion.
  - (5). Form and contents of report.
  - (6). Time of filing report.
  - (7). Proceedings before appellate court.

**VI. PARTIES.**

- 321. Appellants or plaintiffs in error.
  - 321.1. — In general.
- 322. — Proper or necessary parties in general.
- 323. — Separate proceeding by one or more coparties.

**30. APPEAL AND ERROR****VI. PARTIES.(Cont'd)**

- (1). In general.
- (2). Parties severally liable or having separate interests.
- (3). Parties jointly liable or having joint interests.
- (4). Effect of statutes dispensing with necessity of joining coparty in general.
- (5). Appeal during term time or in vacation.
- (6). Right to use name of coparty.
- 324. — Summons and severance.
- 325. — Joinder.
- 326. Appellees, respondents, or defendants in error.
- 326.1. — In general.
- 327. — Proper or necessary parties.
  - (.5). In general.
  - (1). Proper parties.
  - (2). Necessary parties in general.
  - (3). To separate proceeding by one or more coparties.
  - (4). Persons not parties below or having no interest.
  - (5). Judgment favorable to one or more coparties.
  - (6). Service of process, and effect of default, disclaimer, or dismissal.
  - (7). Character of party and nature of interest in general.
  - (8). Executors or administrators.
  - (9). Receivers.
  - (10). Debtors, creditors, and insolvents.
  - (11). Proceedings to establish or determine priority of liens or claims in general.
  - (12). Mortgagors and mortgagees.
  - (13). Incidental and collateral proceedings.
  - (14). Proceedings relating to provisional remedies.
- 328. — Joinder.
- 329. Intervention or addition of new parties.
- 330. Transfer or devolution of interest.
  - (1). In general.
  - (2). Substitution of parties.
- 331. Death.
  - 331.1. — In general.

**VI. PARTIES.(Cont'd)**

- 332. — Before appeal or writ of error.
- 333. — Pending appeal or writ of error.
- 334. — Continuance or revival of proceedings.
  - (.5). In general.
  - (1). Necessity for revival or substitution.
  - (2). Death of coparty.
  - (3). Persons required or entitled to be substituted on death of party in representative capacity.
  - (4). Persons by or against whom revival may be had—executors and administrators.
  - (4.1). — In general.
  - (5). — Heirs and devisees.
  - (6). Proceedings.
  - (7). Time for revival.
- 335. Designation and description.
- 336.1. Defects and objections.
- 336.2. Amendments.

**VII. TRANSFER OF CAUSE.****(A) TIME OF TAKING PROCEEDINGS.**

- 337. Premature appeal or other proceeding.
  - (1). In general.
  - (2). Before judgment or order or perfecting thereof.
  - (3). Pendency of proceedings in lower court.
- 338. Nature and operation of limitations in general.
  - (1). In general.
  - (2). Construction and application of particular statutes.
  - (3). Cross-appeal.
- 339. Limitations applicable to particular proceedings.
  - (1). In general.
  - (2). Interlocutory judgments or orders in general.
  - (3). Order or decree of dismissal.
  - (4). Proceedings relating to provisional remedies.
  - (5). Orders after final judgment.
  - (6). Order on motion for new trial.
- 340. Limitations of review of particular questions.

**30. APPEAL AND ERROR****VII. TRANSFER OF CAUSE.**(Cont'd)

- 342. Separate proceeding by or against one or more coparties.
- 343. Commencement of period of limitation.
- 343.1. — In general.
- 344. — Completeness or finality of decision.
- 345.1. — Motion for new trial.
- 345.2. — Petition for rehearing or bill of review.
- 346. — Effect of motion to vacate or modify judgment or order.
- 346.1. — Effect of motion to vacate or set aside.
- 346.2. — Effect of amendment or alteration of judgment or order.
- 347. — Rendition or entry of judgment or order.
  - (1). In general.
  - (2). Character of judgment or order.
  - (3). Entry nunc pro tunc, and effect of stipulation, appeal, or objections to cost bill.
- 348. — Service of notice or copy of judgment or order.
  - (1). In general.
  - (2). Sufficiency of notice or copy and service thereof.
- 349. Effect of disability or death of party or counsel.
- 350. Fast bill of exceptions or writ of error.
- 351. Taking and perfecting proceeding in time.
  - (1). In general.
  - (2). What proceedings must be taken within time limited.
- 352. Extension of time.
- 352.1. — In general.
- 353. — Judicial authority.
- 354. — Consent of parties.
- 355. Waiver of objections to delay.
- 356. Effect of delay or failure to take proceedings.
- 357. Relief in case of failure to proceed in time.
  - (1). In general.
  - (2). Grounds for relief.

**(B) PETITION OR PRAYER, ALLOWANCE, AND CERTIFICATE OR AFFIDAVIT.**

- 358. Necessity of allowance or leave.
- 359. Authority of court or judge.
- 360. Prayer and allowance in open court.
- 361. Petition, affidavit, or other application.
  - (.5). In general.
  - (1). Necessity.
  - (2). Form, requisites, and sufficiency in general.
  - (3). Designation of court, cause, or parties.
  - (4). Allegations of interest.
  - (5). Hearing, objections, and amendment.
- 362. Specification of errors.
  - (.5). In general.
  - (1). Necessity.
  - (2). Sufficiency.
  - (3). Amendment or filing nunc pro tunc.
- 363. Grounds for allowance or refusal.
- 364. Term or day to which appeal may be taken or writ made returnable.
- 365. Order for appeal or writ of error.
  - (1). In general.
  - (2). Vacation or modification of order.
- 366. Certificate as to grounds.
- 367. Affidavit of merits and good faith.
- 368. Stipulation for judgment absolute on appeal from order granting new trial.

**(C) PAYMENT OF FEES OR COSTS, AND BONDS OR OTHER SECURITIES (OBSOLETE, SEE COSTS, FEES, AND SANCTIONS IV).****(D) WRIT OF ERROR, CITATION, OR NOTICE.**

- 396. Necessity of appellate process or of notice.
- 397. Process or notice on appeal in open court.
- 398. Writ of error.
- 398.1. — In general.
- 399. — Issuance.
- 400. — Form and requisites.
- 401. — Service.
- 402. — Return.
- 403. — Defects, objections, and amendments.
- 404. Citation or other process.
- 404.1. — In general.

**30. APPEAL AND ERROR****VII. TRANSFER OF CAUSE.(Cont'd)**

- 405. — Issuance.
- 406. — Form and requisites.
- 407. — Service.
  - (1). In general.
  - (2). Time for service.
- 408. — Return.
- 409. — Defects, objections, and amendments.
- 410. Scire facias to hear errors.
- 411. Nature and method of notice in general.
- 412. Authority to give notice.
- 413. Parties entitled to notice.
- 413.1. — In general.
- 414. — Adverse parties.
- 415. — Coparties.
- 416. Form and requisites of notice.
- 416.1. — In general.
- 417. — Sufficiency in general.
  - (1). In general.
  - (2). Title of cause and designation or description of parties.
  - (3). Signature.
- 418. — Decisions and proceedings included.
- 419. — Descriptions of judgments or orders.
  - (1). In general.
  - (2). Showing time of rendition or entry.
- 420. — Specification of interlocutory or intermediate judgments or orders.
- 421. — Specification of errors.
- 422. — Defects, objections, and amendments.
- 423. Service of notice.
- 423.1. — In general.
- 424. — Persons to be served.
- 425. — Time for service.
- 426. — Mode and sufficiency of service.
- 427. — Return or proof of service.
- 428. Filing notice and proof of service.
  - (1). In general.
  - (2). Time for filing.
- 429. Waiver of process or notice or of defects therein.
- 430. Effect of failure to serve process or to give notice.

**VII. TRANSFER OF CAUSE.(Cont'd)**

- (1). In general.
- (2). Relief from effect of failure.

**(E) ENTRY, DOCKETING, AND APPEARANCE.**

- 431. Necessity of entering or docketing cause.
- 432. Time for entry or docketing.
- 433. Sufficiency of entry.
- 434. Necessity and requisites of appearance.
- 435. Effect of appearance.

**VIII. EFFECT OF TRANSFER OF CAUSE OR PROCEEDINGS THEREFOR.****(A) POWERS AND PROCEEDINGS OF LOWER COURT.**

- 436. Transfer of jurisdiction in general.
- 437. Force and effect of judgment or order appealed from.
- 438. New trial or rehearing.
- 439. Opening or vacating judgment or order.
- 440. Amendment of proceedings.
- 441. Perfecting and transmission of record.
- 442. Collateral actions or proceedings.
- 443. Property in controversy.
- 444. Provisional remedies.
- 445. — In general.
- 446. — Attachment and garnishment.
- 447. — Injunction.
- 448. — Receiver.
- 449. Interlocutory appeals.
- 450. Proceedings for review of part of judgment or order.
- 451. Proceedings for review by one or more coparties.
- 452. Irregular or ineffectual proceedings for review.

**(B) JURISDICTION ACQUIRED BY APPELLATE COURT.**

- 454. Effect of taking appeal or other proceeding.
- 455. Time when jurisdiction attaches.
- 456. Extent of jurisdiction.
- 457. Effect of subsequent proceedings in court below.

**IX. SUPERSEDEAS OR STAY OF PROCEEDINGS.**

- 458. Right to supersedeas or stay in general.
  - (1). In general.

**30. APPEAL AND ERROR****IX. SUPERSEDEAS OR STAY OF PROCEEDINGS.(Cont'd)**

- (2). Judgments or orders which may be superseded or stayed in general.
- (3). Injunction or appointment and proceedings of receiver.
- 459. Taking and perfecting appeal or other proceeding for review as condition.
- 460. Operation of appeal or writ of error and necessity for security or allowance.
  - (1). In general.
  - (2). Nature of judgment or decree.
  - (3). Court from or to which appeal is taken.
  - (4). Parties required to give security.
- 461. Use of appeal or cost bond as supersedeas bond.
- 462. Upon security.
- 462.1. — In general.
- 463. — Parties to whom security to be given.
- 464. — Sureties.
- 465. — Amount or penalty of bond or undertaking.
  - (1). In general.
  - (2). Determination of amount by court.
- 466. — Conditions of bond or undertaking.
- 467. — Form and contents of bond or undertaking.
- 468. — Time of giving bond.
- 469. — Execution of bond or undertaking.
- 470. — Approval of bond or undertaking.
- 471. — Delivery or filing and service of bond or undertaking.
- 472. — Deposit as security.
- 473. — Proceeding in forma pauperis.
- 474. — Amendment of bond or undertaking.
- 475. — Additional or new security.
- 476. Upon allowance by court or judge.
- 476.1. — In general.
- 477. — Authority of court or judge.
- 478. — Application and proceedings thereon.
- 479. — Grounds for allowance.
  - (1). In general.
  - (2). Discretion of court.

**IX. SUPERSEDEAS OR STAY OF PROCEEDINGS.(Cont'd)**

- 480. — Security or other conditions.
- 481. — Order for supersedeas or stay.
- 482. Modifying or vacating.
- 483. Operation and effect pending further appeal.
- 484. Scope and effect as stay.
- 484.1. — In general.
- 485. — Proceeding in cause in general.
  - (1). In general.
  - (2). Enforcement of judgment or order.
  - (3). Performance of judgment.
  - (4). Commencement and continuance of stay and effect of prior proceedings.
- 486. — Arrest and bail.
- 487. — Attachment and garnishment.
- 488. — Injunction.
  - (.5). In general.
  - (1). Appeal from dismissal of suit or dissolution of injunction.
  - (2). Appeal from grant or denial of injunction.
- 489. — Appointment and proceedings of receiver.
- 490. — Other actions or proceedings.
- 491. Proceedings in cause upon giving security for restitution.
- 492. Proceedings in violation of supersedeas or stay.

**X. RECORD.****(A) MATTERS TO BE SHOWN.**

- 493. Jurisdiction of lower court.
- 494. Nature and form of decision.
- 495. Grounds of decision.
- 496. Proceedings sustaining judgment or order.
- 497. Grounds of review.
  - (1). In general.
  - (2). Persons entitled to review.
- 498. Presentation and reservation of grounds of review.
- 498.1. — In general.
- 499. — Questions and objections in general.
  - (1). In general.



**30. APPEAL AND ERROR****X. RECORD.**(Cont'd)

- (2). Objections to pleadings.
- (3). Objections to evidence and depositions.
- (4). Instructions.
- 500. — Rulings by lower court.
  - (1). In general.
  - (2). Rulings on pleadings.
  - (3). Rulings on evidence.
  - (4). Instructions.
- 501. — Exceptions.
  - (1). In general.
  - (2). Rulings as to pleadings.
  - (3). Rulings as to evidence.
  - (4). Instructions.
  - (5). Findings or judgment.
- 502. — Motions for new trial.
  - (1). In general.
  - (2). Review of proceedings at trial.
  - (3). Review of sufficiency of evidence.
  - (4). Notice of motion.
  - (5). Time of filing or service.
  - (6). Ruling or order on motion.
  - (7). Exceptions to decision.
- 503. Jurisdiction of appellate court.
- 504. Taking and perfecting of appeal or other proceeding for review.
- 504.1. — In general.
- 505. — Time of taking proceedings.
- 506. — Sufficiency of proceedings in general.
- 507. — Allowance or leave.
- 508. — Security.
- 509. — Process or notice.
- 510. Filing of papers part of record.
- 511. Making and filing of bill of exceptions, case, or statement.
  - (1). In general.
  - (2). Time of making and filing in general.
  - (3). Allowance or extension of time.
- 512. Proceedings of intermediate courts.
- 513. Several appeals or proceedings for review, and cross-appeals.
- 514. Successive appeals or proceedings for review.
- 515. Incorporating evidence and stenographer's report.
  - (1). In general.

**X. RECORD.**(Cont'd)

- (2). In equity suits.
  - (3). Filing longhand manuscript of evidence.
- (B) SCOPE AND CONTENTS.**
- 516. Proceedings included in general.
  - 517. Process and appearance.
  - 518. Pleadings and proceedings relating thereto.
    - (1). In general.
    - (2). Interrogatories and answers thereto.
    - (3). Demurrers and rulings thereon.
    - (4). Amendment of pleadings.
    - (5). Exhibits, instruments sued on, and bills of particulars.
    - (6). Striking out pleadings, and proceedings relating thereto.
    - (7). Judgment on the pleadings.
  - 519. Stipulations.
  - 520. Interlocutory motions, orders, and judgments.
    - (1). In general.
    - (2). Proceedings preliminary to trial in general.
    - (3). Change of venue or transfer of cause.
    - (4). Continuance.
    - (5). Dismissal and nonsuit.
  - 521. Evidence.
  - 522. — In general.
    - (1). In general.
    - (2). Demurrer to evidence and motion to strike out.
  - 523.1. — Depositions.
  - 523.2. — Affidavits.
  - 524. — Documents.
  - 525. Instructions.
    - (1). In general.
    - (2). Signing and filing.
    - (3). Marking "Given" or "Refused," and exceptions thereto.
  - 526. Proceedings on reference.
  - 527.1. Verdict.
  - 527.2. Findings of fact, conclusions of law, and decision.
  - 528. Proceedings on motion in arrest, for new trial, or rehearing.
    - (1). In general.

**30. APPEAL AND ERROR****X. RECORD.(Cont'd)**

- (2). Notice of motion for new trial.
- (3). Statements on motion.
- (4). Affidavits and other evidence.
- 529. Judgment or decree.
  - (1). In general.
  - (2). Vacation or modification of judgment.
- 530. Proceedings after judgment.
- 531. Record on review of interlocutory decision.
- 532. Record on review of decision of intermediate court.
- 533. Opinion of lower court.
  - (1). In general.
  - (2). Opinion of intermediate court.
- 534. Proceedings for appeal or other review.
- 535. Bill of exceptions, case, or statement.
- 535.1. — In general.
- 536. — As part of record in general.
- 537. — Necessity of timely making and filing in lower court.
- 538. Special orders as to contents of record.
- 539. Stipulations as to contents of record.
- 540. Papers referred to in record.
- 541. Official certificates or statements accompanying transcript.
- 542. Affidavits accompanying or supplementing transcript.
- 543. Effect of loss or destruction of record.

**(C) NECESSITY OF BILL OF EXCEPTIONS, CASE, OR STATEMENT OF FACTS.**

- 544. Decisions not otherwise reviewable.
  - (1). In general.
  - (2). Extent of review in general.
  - (3). Matters apparent of record.
- 545. Proceedings not part of record.
- 546. Presentation of grounds of review.
- 546.1. — In general.
- 547. — Facts not shown by record in general.
  - (1). In general.
  - (2). Verdict and findings.
  - (3). Conduct and remarks of court or counsel.
- 548. — Evidence.
  - (1). In general.
  - (2). Necessity of statement of facts in general.

**X. RECORD.(Cont'd)**

- (3). Nature of question or issue.
- (4). Proceedings on motions, and dismissal, nonsuit, demurrer to evidence, or direction of verdict.
- (5). Admission or exclusion of evidence.
- (6). Instructions.
- (7). Cases in equity.
- 549. Presentation of exceptions taken.
  - (1). In general.
  - (2). Rulings as to pleadings and evidence.
  - (3). Instructions.
  - (4). Verdict, findings, or judgment.
  - (5). Rulings on motions.
- 550. Changing case into bill of exceptions or special verdict.
- 551. Necessity of case or statement in addition to bill of exceptions.
- 552. Scope and sufficiency of case, statement, or certificate of evidence.
- 553. Substitutes.
  - (1). In general.
  - (2). Reporter's notes and transcript or abstract of testimony.
- 554. Effect of failure to make bill, case, or statement.
  - (1). In general.
  - (2). Dismissal of appeal.
  - (3). Affirmance of judgment.
- 555. Effect of striking out bill, case, or statement.

**(D) CONTENTS, MAKING, AND SETTLEMENT OF CASE OR STATEMENT OF FACTS.**

- 556. Purpose and functions.
- 557. Duty to make.
- 558. Parties participating.
- 559. Matters included.
- 560. Incorporating and abridging evidence in general.
- 561. Incorporating stenographer's report.
- 562. Incorporating matters of record, exhibits, and other documents.
- 563. Form and arrangement.
- 564. Time for making and filing or service.
  - (1). In general.
  - (2). Time for filing in general.

**30. APPEAL AND ERROR****X. RECORD.(Cont'd)**

- (3). Extension or enlargement of time in general.
- (4). Failure to make or serve in time.
- (5). Failure to file in time and excuses therefor.
- 565. Filing and serving proposed case or statement.
- 566. Proposed amendments or counter case or statement.
- 567. Time for settlement.
  - (1). In general.
  - (2). Extension of time and waiver of objections.
- 568. Notice of and proceedings for settlement.
- 569. Settlement and signing.
  - (1). In general.
  - (2). Necessity of settlement or approval.
  - (3). Authority of court or judge.
  - (4). Sufficiency of case or statement and amendment thereof.
- 570. Resettlement.
- 571. Proceedings to compel settlement and signing.
- 573. Making and filing agreed case or statement.
- 574. Procuring and filing certificate of evidence.
  - (1). In general.
  - (2). Time for making and filing.
  - (3). Who may make.
  - (4). Form, requisites, and sufficiency.
- 575. Certificate as to correctness of stenographer's report.
- 576. Report by trial judge of facts found.
- 577. Unauthorized alterations.
- 578. Supplemental case, statement, or certificate.

**(E) ABSTRACTS.**

- 579. Purpose and functions.
- 580. Necessity and duty to make.
- 581. Matters included.
  - (1). In general.
  - (2). Objections and exceptions.
  - (3). Recitals as to bill of exceptions.
  - (4). Pleadings.
  - (5). Evidence.

**X. RECORD.(Cont'd)**

- (6). Instructions.
- (7). Judgment.
- (8). Motion for new trial.
- 582. Setting out or abridging matters of record.
  - (1). In general.
  - (2). Evidence.
- 583. References to record.
- 584. Form and arrangement.
- 585. Additional or counter abstract of appellee.
  - (1). In general.
  - (2). Evidence.
  - (3). Time of filing.
- 586. Scope and sufficiency.
  - (1). In general.
  - (2). As index of record.
  - (3). Evidence.
  - (4). Judgment.
  - (5). Objections and exceptions.
  - (6). Notice of appeal.
  - (7). Additional or counter abstract.
- 587. Agreed abstract.
- 588. Brief of evidence.
- 589. Paper books.
- 590. Amended and supplemental abstracts or briefs.
- 591. Substitutes.
- 592.1. Effect of failure to make abstract.
- 592.2. Effect of failure to make brief of evidence.

**(F) MAKING, FORM, AND REQUISITES OF TRANSCRIPT OR RETURN.**

- 593. Purpose and functions.
- 594. Necessity.
- 595. Necessity for separate transcript on separate appeals and cross-appeals.
- 596. Duty to make.
- 597. Record or part thereof included.
  - (1). In general.
  - (2). Verdict or judgment and judgment roll.
  - (3). Taking and perfecting appeal.
- 598. Original papers.
- 600. Incorporating bill of exceptions.
  - (1). In general.
  - (2). Original bill.

**30. APPEAL AND ERROR****X. RECORD.(Cont'd)**

- 601. Incorporating case or statement of facts.
- 603. Special orders as to contents.
- 604. Stipulations as to contents.
- 605. Form and arrangement.
- 606. Index and marginal notes.
- 607. Proceedings for preparation.
  - (1). In general.
  - (2). Directions or praecipe in general.
  - (3). Incorporating original bill of exceptions.
  - (4). Filing schedule for transcript.
- 608. Sufficiency.
  - (1). In general.
  - (2). Partial transcript.
- 609. Supplemental transcript or return.
- 610. Substitutes.
- 611. Effect of failure to make transcript or return.

**(G) AUTHENTICATION AND CERTIFICATION.**

- 612. Transcript or return.
  - (.5). In general.
  - (1). Necessity of certification.
  - (2). Who may certify.
  - (3). Manner, form, and requisites in general.
  - (4). Sufficiency in general.
  - (5). Necessity of showing that all proceedings and evidence are included.
- 613. Bill of exceptions.
  - (1). In general.
  - (2). Form, requisites, and sufficiency.
- 614. Case, statement of facts, or certificate of evidence.
- 615. Abstract or brief of evidence.
- 616. Papers included, referred to, or annexed.
  - (1). In general.
  - (2). Motions or affidavits used thereon.
  - (3). Instructions.
- 617. Alteration of certificate.
- 618. Supplemental certificate.

**(H) TRANSMISSION AND FILING.**

- 619. Necessity and duty of filing in appellate court.
- 620. Time for transmission and filing.

**X. RECORD.(Cont'd)**

- 620.1. — In general.
- 621. — Limitations applicable.
  - (1). In general.
  - (2). During or before succeeding term of court.
  - (3). Within certain time after appeal or rendition of judgment.
- 622. — Commencement of period of limitation.
- 623. — Computation of time.
- 624. — Extension of time.
- 625. Mode and sufficiency of transmission and filing.
- 626. Failure to file in time.
- 627. — In general.
- 627.2. — Dismissal.
- 627.3. — Affirmance.
- 628. — Excuses for delay.
  - (1). In general.
  - (2). Fault of judge, clerk, or other officer, or of appellee or his counsel.
  - (3). Stipulations and waiver.
- 629. — Relief.
- 630. Loss, destruction, or withdrawal from files.

**(I) PRINTING AND SERVICE OF COPIES.**

- 631. Printing.
- 632. Service of copies.
- 633. Effect of failure to print or serve copies.

**(J) DEFECTS, OBJECTIONS, AMENDMENTS, AND CORRECTIONS.**

- 634. Effect of defects in general.
- 635. Effect of omissions.
  - (1). In general.
  - (2). Jurisdictional facts.
  - (3). Evidence.
  - (4). New trial and proceedings for review.
- 636. Effect of including unnecessary matter.
- 637. Defects or errors in making bill of exceptions.
- 638. Defects or errors in making case or statement.
- 639.1. Errors in abstracts.
- 639.2. Errors in briefs of evidence.
- 640. Errors in making transcript or return.

**30. APPEAL AND ERROR****X. RECORD.(Cont'd)**

- 641. Defects in authentication or certificate.
- 642. Amendment or correction in general.
- 643. Time to amend.
  - (1). In general.
  - (2). Bill of exceptions, case, or statement of facts.
  - (3). Authentication and certification.
  - (4). Suggestion of diminution and certiorari to bring up record.
- 643.5. Time to make objections.
- 644. Waiver of defects or objections.
  - (1). In general.
  - (2). Bill of exceptions, case, statement of facts, or abstract.
- 645. Defects or errors amendable.
- 646. Stipulations for amendment.
- 647. Amendment or correction in lower court.
- 647.1. — In general.
- 648. — Authority.
- 649. — Proceedings.
- 650. — Certifying, transmitting, and incorporating amendment.
- 651. — Operation and effect.
- 652. Amendment in appellate court.
- 652.1. — In general.
- 653. — Authority.
  - (1). In general.
  - (2). Bill of exceptions.
  - (3). Case or statement of facts.
- 654. — Supplying omissions.
- 655. — Striking out.
  - (1). In general.
  - (2). Bill of exceptions.
  - (3). Case, statement of facts, or certificate of evidence.
  - (4). Abstract of record.
- 656. — Correcting or curing errors or defects.
  - (1). In general.
  - (2). Proof of defects or errors.
  - (3). Correction of findings.
- 657. Remitting to lower court.
  - (1). In general.
  - (2). Bill of exceptions.
  - (3). Case or statement of facts.
- 658. Certiorari or other proceedings to bring up record.

**X. RECORD.(Cont'd)**

- 658.1. — In general.
- 659. — Authority and grounds.
  - (.5). In general.
  - (1). To correct defects or errors, or supply omissions.
  - (2). To bring up amendments made below.
  - (3). Omissions which may be supplied in general.
  - (4). Matters not of record or not considered below.
  - (5). Matter to affirm or reverse.
  - (6). Immaterial or unnecessary matters.
- 660. — Proceedings.
  - (1). In general.
  - (2). Suggestion of diminution of record, application for writ and notice.
  - (3). Proceedings sua sponte.
- 661. — Return.

**(K) CONCLUSIVENESS AND EFFECT.**

- 662. Conclusiveness of record.
  - (1). In general.
  - (2). Recitals.
  - (3). Bill of exceptions.
  - (4). Case or statement of facts.
- 663. Conclusiveness of certificate.
  - (1). In general.
  - (2). Certificate or recital that all evidence or proceedings are included.
- 664. Conflict in record.
  - (1). In general.
  - (2). Between bill of exceptions and other parts of record.
  - (3). Between case or statement of facts and other parts of record.
  - (4). Conflict in or between bill of exceptions and case or statement of facts.
- 665. Abstracts.

**(L) IMPEACHMENT OR CONTRADICTION.**

- 666. Impeaching or contradicting.
- 666.1. — In general.
- 667. — Grounds and extent.

**30. APPEAL AND ERROR****X. RECORD.(Cont'd)**

- 668. — Admissibility of evidence in general.
- 669. — Official certificates.
- 670. — Affidavits.
  - (1). In general.
  - (2). To impeach bill of exceptions, case, or statement of facts.

**(M) QUESTIONS PRESENTED FOR REVIEW.**

- 671. Limitation by scope of record in general.
  - (1). In general.
  - (2). Effect of omissions, or imperfections in general.
  - (3). Effect of omission of evidence, or recital or certificate that it is all included.
  - (4). Effect of omission of facts, proceedings, or evidence relating to particular questions.
  - (5). Effect of omission of instrument sued on or involved.
  - (6). Limitation by bill of exceptions, case, or statement of facts.
  - (7). Limitation by abstract of record.
- 672. Errors on face of record.
- 673.1. Grounds and forms of action.
- 673.2. Defenses.
- 673.3. — In general.
- 673.4. — Res judicata.
- 674. Organization and jurisdiction of lower court.
- 675. Venue.
- 676. Parties.
- 677. Process.
- 678. Pleading.
- 679. — In general.
  - (1). In general.
  - (2). Necessity of setting forth pleadings.
- 680. — Demurrers.
  - (1). In general.
  - (2). Necessity of setting forth demurrer or grounds thereof.
  - (3). Necessity of setting forth pleadings.
- 681. — Amendments.
- 682. — Striking out.
- 683. Depositions and affidavits.
- 684. Questions on interlocutory proceedings.

**X. RECORD.(Cont'd)**

- (1). In general.
- (2). Continuance.
- (3). Provisional remedies.
- (4). Dismissal or nonsuit before trial.
- 685. Right to trial by jury.
- 686. Qualifications and selection of jurors.
- 687. Reference.
- 688. Conduct of trial or hearing.
  - (1). In general.
  - (2). Arguments and conduct of counsel.
  - (3). Custody and conduct of jury.
- 689. Admissibility of evidence.
- 690. — In general.
  - (1). In general.
  - (2). Necessity of showing that evidence was introduced.
  - (3). Necessity of setting forth facts establishing objection.
  - (4). Necessity of setting forth evidence in general.
  - (5). Necessity of setting forth evidence bearing on that admitted or excluded.
  - (6). Determination of competency of witnesses.
  - (7). Necessity of setting forth question asked or excluded.
- 691. — Necessity of setting forth all the evidence.
- 692. — Necessity of setting forth evidence excluded.
  - (1). In general.
  - (2). Depositions.
  - (3). Sufficiency of offer of proof or showing of evidence excluded.
- 693. Sufficiency of evidence.
- 694. — In general.
  - (1). In general.
  - (2). Dismissal, nonsuit, demurrer to evidence, or direction of verdict in general.
- 695. — Necessity of setting forth all the evidence.
  - (1). In general.
  - (2). Dismissal, nonsuit, demurrer to evidence, or direction of verdict.
  - (3). Omission of exhibits, maps, or documents.

**30. APPEAL AND ERROR****X. RECORD.(Cont'd)**

- 696. — Necessity of recital or certificate that all the evidence is included.
  - (1). In general.
  - (2). Dismissal, nonsuit, demurrer to evidence, or direction of verdict.
- 697. — Sufficiency of recital or certificate that all the evidence is included.
  - (1). In general.
  - (2). Indirect recital or certificate.
  - (3). Recital that all the testimony is included.
  - (4). Recital or certificate that all the material evidence is included.
  - (5). Necessity and sufficiency of recital or certificate that all evidence offered is included.
  - (6). Omissions apparent though recital or certificate is sufficient.
  - (7). Stipulations or certificates by counsel.
- 698. Instructions.
- 699. — In general.
  - (1). In general.
  - (2). Necessity of setting forth instructions in general.
  - (3). Necessity of setting forth matters referred to in instruction.
  - (4). Requests for instructions.
- 700. — Necessity of setting forth pleadings.
- 701. — Necessity of setting forth evidence.
  - (1). In general.
  - (2). To review instructions refused.
  - (3). Necessity and sufficiency of recital that all the evidence is included.
- 702. — Necessity of setting forth entire charge.
  - (1). In general.
  - (2). Necessity and sufficiency of recital that all instructions are included.
- 703. — Necessity of setting forth instructions refused.
- 704.1. Verdict.
- 704.2. Findings and decision.
- 705. Amount of recovery or extent of relief.
- 706. Grounds for arrest of judgment, new trial, or rehearing.
  - (1). In general.

**X. RECORD.(Cont'd)**

- (2). Necessity of setting forth motion or grounds thereof.
- (3). Necessity of setting forth proceedings and evidence on motion.
- (4). Necessity of setting forth evidence at trial in general.
- (5). Necessity of setting forth all the evidence.
- 707. Judgment.
  - (1). In general.
  - (2). Necessity of setting forth evidence.
- 708. Questions arising after judgment.
- 709. Costs.
- 711. Questions in intermediate courts.
- (N) MATTERS NOT APPARENT OF RECORD.**
- 712. Matters not included or shown in general.
- 713. Matters improperly included.
  - (1). In general.
  - (2). Matters appearing only as part of motion for new trial.
  - (3). Including matters in bill of exceptions which should go into record proper.
- 714. Matters appearing otherwise than by record.
  - (1). In general.
  - (2). Records in other cases or on former trial or appeal.
  - (3). Stipulations and agreements.
  - (4). Statements and admissions of parties or counsel in general.
  - (5). Briefs.
  - (6). Official certificates and statements.
- 715. Evidence relating to question involved.
  - (1). In general.
  - (2). Affidavits.
- 716. Grounds and reasons for ruling.
- 717. Opinion of lower court.

**XI. ASSIGNMENT OF ERRORS.**

- 718. Purpose and functions.
- 719. Necessity.
  - (1). In general.
  - (2). In actions at law or suits in equity in general.

**30. APPEAL AND ERROR****XI. ASSIGNMENT OF ERRORS.(Cont'd)**

- (3). Jurisdictional questions.
- (4). Pleadings and rulings thereon.
- (5). Rulings as to evidence.
- (6). Sufficiency of evidence.
- (7). Instructions.
- (8). Verdict, findings, or judgment.
- (9). Amount of recovery or extent of relief.
- (10). Rulings on motions for new trial and proceedings after judgment.
- (11). On appeal from intermediate court.
- 720. Parties by or against whom errors may be assigned.
- 720.5. — In general.
- 721. — Joint assignments.
  - (1). In general.
  - (2). To ruling on demurrer or motion.
- 721.3. Separate assignments.
- 722. Form and requisites in general.
  - (1). In general.
  - (2). Designation of court or cause.
  - (3). Designation of parties.
  - (4). Signature.
- 723. Specification of errors.
- 724. — In general.
  - (1). In general.
  - (2). Certainty, definiteness, and particularity, in general.
  - (3). Particular assignments.
  - (4). Reasons and grounds of objections and exceptions.
  - (5). Reference to record as sufficient specification.
- 725. — Rulings on pleadings.
  - (1). In general.
  - (2). Demurrer or exception.
- 726. — Interlocutory proceedings.
- 727. — Conduct of trial.
- 728. — Rulings as to evidence.
  - (1). In general.
  - (2). Identifying or setting out evidence in general.
  - (3). Excluding or striking out.
- 729. — Submission of issues or questions to jury.
- 730. — Instructions.

**XI. ASSIGNMENT OF ERRORS.(Cont'd)**

- (1). In general.
- (2). Identifying or setting out instructions in general.
- 731. — Determination.
  - (.5). In general.
  - (1). Verdict.
  - (2). Findings of fact and conclusions of law.
  - (3). Decision.
  - (4). Report of referee, auditor, or commissioner, and rulings thereon.
  - (5). Sufficiency of evidence.
- 732. — Motions in arrest, for new trial, or for rehearing.
- 733. — Judgment.
- 734. — Proceedings after judgment.
- 735. Including errors in one assignment.
- 736. — In general.
- 737. — Rulings on pleadings.
- 738. — Rulings as to evidence.
- 739. — Instructions.
- 740. — Determination.
  - (.5). In general.
  - (1). Verdict.
  - (2). Findings of fact and conclusions of law.
  - (3). Report of clerk or master.
  - (4). Decision or judgment.
  - (5). Sufficiency of evidence and direction of verdict.
- 741. — Motions in arrest, for new trial, or for rehearing.
- 742. Propositions and statements accompanying assignment of errors.
  - (1). In general.
  - (2). Grouping assignments and including errors in one assignment in general.
  - (3). Rulings on pleadings.
  - (4). Rulings as to evidence.
  - (5). Instructions.
  - (6). Verdict, findings, or judgment.
  - (7). Motions in arrest or for new trial.
- 743. References to record.
  - (1). In general.
  - (2). Rulings as to evidence.
- 744. Time for filing.



**30. APPEAL AND ERROR****XI. ASSIGNMENT OF ERRORS.(Cont'd)**

- 745. Filing and annexing to record.
- 746. Service.
- 747. Assignment of cross-errors.
  - (.5). In general.
  - (1). Right to assign.
  - (2). Necessity.
  - (3). Form and requisites, filing, and annexing to record.
  - (4). Scope and effect.
- 748. Defects and objections.
- 748.2. Amendments.
- 749. Pleading to assignment and joinder in error.
- 750. Scope and effect of assignment.
  - (1). In general.
  - (2). Pleadings and rulings thereon.
  - (3). Rulings as to evidence.
  - (4). Sufficiency of evidence.
  - (5). Submission of issues or questions to jury.
  - (6). Instructions.
  - (7). Verdict, findings, or judgment.
  - (8). Amount of recovery or extent of relief.
  - (9). Questions raised by assigning error to ruling on motion for new trial.
- 751. Relation to record.
- 752. Substitutes.
- 753. Effect of failure to make or file.
  - (1). In general.
  - (2). Dismissal or affirmance.
- 754. Effect of failure to assign particular errors.
  - (1). In general.
  - (2). Instructions.
  - (3). Motions for new trial.

**XII. BRIEFS.**

- 755. Necessity.
- 756. Form and requisites in general.
- 757. Statement of case or of facts.
  - (1). In general.
  - (2). Setting out pleadings.
  - (3). Statement of evidence.
  - (4). Setting out instructions.
  - (5). Statement of findings of fact and conclusions of law.

**XII. BRIEFS.(Cont'd)**

- 758. Specification of errors.
  - 758.1. — In general.
  - 758.2. — Nature of question or defect.
  - 758.3. — Requisites and sufficiency.
    - (1). In general.
    - (2). General or specific statements; abstractions.
    - (3). Grouping assignments; multifariousness.
    - (4). Nature of error or defect in general.
    - (5). Pleadings.
    - (6). Admission or exclusion of evidence.
    - (7). Trial in general.
    - (8). Instructions.
    - (9). Verdict, findings, or decision.
    - (10). New trial.
    - (11). Judgment.
- 759. Incorporation of assignment of errors.
- 760. References to record.
  - (1). In general.
  - (2). References to evidence and rulings thereon.
- 760.3. References to assignments of error.
- 761. Points and arguments.
- 762. Reply briefs.
- 763. Additional or supplemental briefs.
- 764. Printing.
- 765. Filing and service.
- 766. Defects, objections, and amendments.
- 767. Striking out.
  - (1). In general.
  - (2). Improper matter.
- 768. Scope and effect.
- 769. Failure to file or serve, or to file or serve in time.
  - 769.1. — In general.
- 770. — Effect.
  - (1). In general.
  - (2). Striking out.
- 771. — Excuses.
- 772. — Relief.
- 773. — Dismissal or affirmance or reversal.
  - (1). In general.
  - (2). Dismissal in general.
  - (3). Grounds for not dismissing.

**30. APPEAL AND ERROR****XII. BRIEFS.(Cont'd)**

- (4). Affirmance.
- (5). Reversal.
- 774. Failure to set out points and arguments.

**XIII. DISMISSAL, WITHDRAWAL, OR ABANDONMENT.**

- 775. Nature of remedy by dismissal.
- 776. Voluntary dismissal or withdrawal.
- 777. Dismissal on consent.
- 778. Power to order dismissal.
- 779. Grounds for dismissal.
- 780. — In general.
  - (1). In general.
  - (2). Want of interest.
- 781. — Want of actual controversy.
  - (1). In general.
  - (2). Nature of action or proceedings in general.
  - (3). Collusive actions.
  - (4). Effect of delay or lapse of time in general.
  - (5). Effect of succession to or expiration of term of office.
  - (6). Effect of settlement in general.
  - (7). Effect of compliance with judgment or order or acceptance of benefits.
- 782. — Want of jurisdiction.
- 783. — Defects in proceedings in lower court.
  - (1). In general.
  - (2). Motion for new trial.
- 784. — Defects in proceedings for review.
- 785. — Defects relating to record.
- 786. — Proceedings frivolous or for delay.
- 787. — Failure to prosecute proceedings.
- 788. — Error not shown.
- 789. — Defects arising pending proceedings.
- 790. — Review unnecessary or ineffectual.
  - (1). In general.
  - (2). Effect of judicial proceedings in general.
  - (3). Effect of decision or judgment.
- 791. — Waiver of defects or objections.
- 792. Dismissal by court on its own motion.
- 793. Dismissal without prejudice.
- 794. Motion for dismissal.

**XIII. DISMISSAL, WITHDRAWAL, OR ABANDONMENT.(Cont'd)**

- 794.1. — In general.
- 795. — Form and requisites.
  - (1). In general.
  - (2). Showing as to grounds for dismissal.
  - (3). Successive motions.
- 796. — Parties.
- 797. — Time for making.
  - (1). In general.
  - (2). Motion to dismiss for defects in proceedings for review.
  - (3). Motions to dismiss for defects relating to record or failure to prosecute.
- 798. — Notice.
- 799. — Affidavits and other proofs.
- 800. — Curing defects before hearing.
- 801. — Hearing and determination.
  - (1). In general.
  - (2). Conflict in affidavits or other proofs.
  - (3). Questions considered in general.
  - (4). Consideration or determination of case on merits and postponement until final hearing in general.
  - (5). Examination of record.
- 802. Order of dismissal.
- 803. Effect of dismissal.
- 804. Plea in abatement.
- 805. Abandonment.
- 806. Order declaring proceedings abandoned.
- 807. Vacating order and reinstatement.

**XIV. DOCKETS, CALENDARS, AND PROCEEDINGS, PRELIMINARY TO HEARING.**

- 808. Making and keeping dockets and calendars in general.
- 809. Order of causes.
- 810. Preferred causes.
- 811. Advancement of cause.
- 812. Correction of calendar.
- 813. Striking off or quashing cause.
- 814. Notice of hearing or argument.

**30. APPEAL AND ERROR****XV. HEARING.****(A) IN GENERAL.**

- 815. Condition of cause in general.
- 816. Consolidation and hearing causes together.
- 817. Time for hearing.
- 818. Continuance or postponement.
- 819. Suspension or stay.
- 820. Conduct of hearing in general.
- 821. Consideration of cause as a whole.
- 822. Arguments of counsel.
- 823. — In general.
- 824. — Oral arguments.
- 825. — Right to open and close.
- 826. Submission without argument; summary disposition.
- 827. Setting aside submission.
- 828. Reargument.

**(B) REHEARING.**

- 829. Rehearing.
- 830. — In general.
  - (1). In general.
  - (2). Divided court.
- 831. — Power to grant.
- 832. — Grounds.
  - (1). In general.
  - (2). Defects in proceedings in lower court or for review.
  - (3). Defects relating to record.
  - (4). Contentions other than those made on the hearing.
  - (5). Matters not apparent of record.
  - (6). Rehearing ineffectual or unnecessary.
- 833. — Application.
  - (1). In general.
  - (2). Parties.
  - (3). Time for making application.
  - (4). Petition or motion and briefs.
  - (5). Hearing and determination.
- 834. — Effect of granting.
- 835. — Scope and conduct.
  - (1). In general.
  - (2). Contentions other than those made on the hearing.
  - (3). Matters not apparent of record.

**XVI. REVIEW.****(A) IN GENERAL.**

- 3001. In general.
- 3002. Power, function, duty, and discretion of reviewing court in general.
- 3003. Relation of reviewing court to parties; court as advocate.

**(B) CONSIDERATIONS PRELIMINARY TO CONDUCTING REVIEW.****1. IN GENERAL.**

- 3011. In general.
- 3012. Order in which reviewing court addresses questions and issues.
- 3013. — In general.
- 3014. — Jurisdiction.
- 3015. — Mootness.
- 3016. — Standing.
- 3017. — Evidence.
- 3018. — Summary judgment.

**2. NECESSITY OF DETERMINATION BY REVIEWING COURT.**

- 3021. In general.
- 3022. Abstract, hypothetical, or academic questions and issues.
- 3023. Mootness.
- 3024. Ripeness; prematurity.
- 3025. Particular questions and issues.
- 3026. — In general.
- 3027. — Procedural questions and issues in general.
- 3028. — Jurisdiction and venue.
- 3029. — Parties, process, and appearance.
- 3030. — Limitations and laches.
- 3031. — Pleading.
- 3032. — Discovery.
- 3033. — Dismissal or nonsuit.
- 3034. — Evidence and witnesses.
- 3035. — Trial or hearing.
  - (1). In general.
  - (2). Instructions.
  - (3). Verdict and findings.
- 3036. — Judgment.
  - (1). In general.
  - (2). Summary judgment.
  - (3). Default judgment.
- 3037. — Taking case or question from jury; judgment as a matter of law.

**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- 3038. — Reconsideration or rehearing; setting aside verdict; new trial.
- 3039. — Remedial questions and issues in general.
- 3040. — Injunctive relief.
  - (1). In general.
  - (2). Preliminary or temporary injunctive relief.
- 3041. — Damages and other monetary relief.
  - (1). In general.
  - (2). Punitive damages.
- 3042. — Costs and fees.
- 3043. — Substantive questions and issues.

**3. MATTERS BROUGHT UP WITH RULING APPEALED FROM.**

- 3051. In general.
- 3052. Interlocutory, collateral, and supplementary matters in general.
- 3053. Particular matters as brought up.
- 3054. — In general.
- 3055. — Parties.
  - (1). In general.
  - (2). Class certification.
  - (3). Intervention.
- 3056. — Pleadings.
- 3057. — Continuance or stay.
- 3058. — Discovery.
- 3059. — Reference.
- 3060. — Dismissal or nonsuit.
- 3061. — Summary judgment.
  - (1). In general.
  - (2). Cross-motions.
- 3062. — Taking case or question from jury; judgment as a matter of law.
- 3063. — Matters arising after ruling appealed from in general.
- 3064. — Reconsideration or rehearing; setting aside verdict; new trial.
  - (1). In general.
  - (2). Motion made after judgment.
- 3065. — Relief from judgment or order.
- 3066. — Remedial matters in general.
  - (1). In general.
  - (2). Provisional remedies in general.
  - (3). Creditors' remedies.
  - (4). Receivers and receivership.
- 3067. — Injunctive relief.

**XVI. REVIEW.(Cont'd)**

- (1). In general.
- (2). Preliminary or temporary injunctive relief.
- 3068. — Damages and other monetary relief.
- 3069. — Costs and fees.
- 3070. Matters brought up on separate appeal from interlocutory, collateral, or supplementary ruling.
- 3071. — In general.
- 3072. — Particular rulings appealed from.
  - (1). In general.
  - (2). Rulings relating to pleadings.
  - (3). Rulings relating to trial or verdict.
  - (4). — In general.
  - (5). — Posttrial rulings in general.
  - (6). — Taking case or question from jury; judgment as a matter of law.
  - (7). — Setting aside verdict; new trial.
  - (8). Rulings relating to previous rulings.
  - (9). — In general.
  - (10). — Postjudgment rulings in general.
  - (11). — Reconsideration or rehearing of previous ruling.
  - (12). — Relief from previous ruling.
  - (13). — Enforcement of previous ruling.
  - (14). Rulings relating to injunctions.
  - (15). Rulings relating to costs and fees.

**(C) PERSONS ENTITLED TO ASSERT ARGUMENTS ON REVIEW.****1. IN GENERAL.**

- 3081. In general.
- 3082. Necessity and nature of harm to person complaining.
- 3083. — In general.
- 3084. — Error affecting nonparty to appeal.
- 3085. — Error affecting coparty or other related party.
- 3086. — Error affecting adverse party.
- 3087. Assertion by appellee, respondent, or defendant in error.

**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- 3088. — In general.
- 3089. — Necessity of separate or cross-appeal in general.
- 3090. — Particular rulings, objections, and contentions.
  - (1). In general.
  - (2). To sustain judgment appealed from.
  - (3). To modify judgment or secure affirmative relief.
  - (4). As against coparty or other related party.
- 3091. Assertion by nonparty.

**2. ESTOPPEL AND WAIVER; INVITED ERROR.**

- 3101. In general.
- 3102. Invited, induced, or encouraged error.
- 3103. Consent, acquiescence, or participation in error.
- 3104. Particular matters and rulings.
- 3105. — In general.
- 3106. — Nature and theory of cause; grounds of action or defense.
- 3107. — Motions, hearings, and orders in general.
- 3108. — Dismissal and nonsuit in general.
- 3109. — Pleading.
- 3110. — Jurisdiction and venue.
- 3111. — Parties, process, and appearance.
- 3112. — Time for proceedings; limitations and laches.
- 3113. — Continuance and stay; consolidation and severance.
- 3114. — Discovery.
- 3115. — Trial.
  - (1). In general.
  - (2). Arguments and conduct of counsel.
  - (3). Submission of issues or questions to jury.
  - (4). Instructions.
  - (5). Custody and conduct of jury.
- 3116. — Evidence and witnesses in general.
- 3117. — Verdict, findings, and sufficiency of evidence.
- 3118. — Judgment.
  - (1). In general.
  - (2). Judgment by default.

**XVI. REVIEW.(Cont'd)**

- (3). Summary judgment.
- 3119. — Taking case or question from jury; judgment as a matter of law.
- 3120. — Reconsideration or rehearing; setting aside verdict; new trial.
- 3121. — Relief from judgment or order.
  - (1). In general.
  - (2). Relief from default judgment.
- 3122. — Remedial matters.
  - (1). In general.
  - (2). Injunctive relief.
  - (3). Monetary relief; damages.
  - (4). Interest.
- 3123. — Costs and fees.
- 3124. — Proceedings for review.

**(D) SCOPE AND EXTENT OF REVIEW.****1. IN GENERAL.**

- 3131. In general.
- 3132. Standard of review in general.
- 3133. Questions and issues considered in general.
- 3134. Questions of law or fact in general.
- 3135. Deference given to lower court in general.
- 3136. Plenary, free, or independent review.
- 3137. De novo review.
- 3138. Review using standard applied below.
- 3139. Discretion of lower court.
- 3140. — In general.
- 3141. — Abuse of discretion.
- 3142. — Failure to exercise discretion.
- 3143. — Substitution of reviewing court's discretion or judgment.
- 3144. Review for correctness or error.
- 3145. — In general.
- 3146. — Clear error; "clearly erroneous" standard.
- 3147. — Manifest or obvious error.
- 3148. — Plain or palpable error.
- 3149. Nature and manner of proceeding below, effect of.
- 3150. — In general.
- 3151. — Legal or equitable proceedings.
  - (1). In general.
  - (2). De novo review.
- 3152. — Special proceedings.
- 3153. — Trial by jury or court.

**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- 3154. Nature of decision being reviewed, effect of.
- 3155. Mode of review, effect of.
- 3156. — In general.
- 3157. — Writ of error; appeal distinguished.
- 3158. — Restricted appeal.
- 3159. — Permissive or discretionary review.
  - (1). In general.
  - (2). Cases or questions reported, reserved, or certified.
  - (3). Interlocutory rulings and appeals.

**2. PARTICULAR SUBJECTS OF REVIEW IN GENERAL.**

- 3161. In general.
- 3162. Conclusions of law in general.
- 3163. — In general.
- 3164. — Deference given to lower court in general.
- 3165. — Plenary, free, or independent review.
- 3166. — De novo review.
- 3167. — Discretion of lower court; abuse of discretion.
- 3168. — Review for correctness or error.
- 3169. Construction, interpretation, or application of law.
- 3170. — In general.
- 3171. — Written documents or instruments in general.
- 3172. — Constitutional law.
- 3173. — Statutory or legislative law.
- 3174. — Administrative law; regulations.
- 3175. — Local law; ordinances.
- 3176. — Judicial law.
- 3177. — Foreign law.
- 3178. — International law.
- 3179. — Treaties.
- 3180. Declarations of law.
- 3181. Choice of law.
- 3182. — In general.
- 3183. — Federal preemption.
- 3184. — State preemption of local law.
- 3185. Application of law to or in light of facts.
- 3186. Mixed questions of law and fact.
- 3187. Agreed or undisputed facts.

**XVI. REVIEW.(Cont'd)**

- 3188. Conclusiveness and effect of prior rulings; res judicata and collateral estoppel.

**3. PROCEDURAL MATTERS IN GENERAL.**

- 3191. In general.
- 3192. Rules of court in general.
- 3193. Motions, hearings, and orders in general.
- 3194. Preliminary proceedings in general.
- 3195. Defenses, objections, and exceptions in general.
- 3196. Dismissal and nonsuit in general.
- 3197. — In general.
- 3198. — Deference given to lower court in general.
- 3199. — Plenary, free, or independent review.
- 3200. — De novo review.
- 3201. — Review using standard applied below.
- 3202. — Discretion of lower court; abuse of discretion.
- 3203. — Review for correctness or error.
- 3204. — Review of lower court's proceedings concerning question.
- 3205. Voluntary dismissal or nonsuit.
- 3206. Failure to prosecute, and dismissal or nonsuit therefor.
- 3207. Dockets and case management.
- 3208. Conferences and scheduling orders.
- 3209. Motions in limine.
- 3210. Jurisdiction.
- 3211. — In general.
- 3212. — Subject-matter jurisdiction.
- 3213. — Personal jurisdiction.
- 3214. — Abstention.
- 3215. Venue.
- 3216. — In general.
- 3217. — Change or transfer of venue.
- 3218. Forum non conveniens.
- 3219. Conditions precedent.
- 3220. — In general.
- 3221. — Exhaustion of other remedies.
- 3222. — Malpractice cases.
- 3223. Mootness, ripeness, finality, and prematurity.
- 3224. Parties.
- 3225. — In general.

**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- 3226. — Standing.
- 3227. — New parties; joinder.
- 3228. — Intervention.
- 3229. — Class actions.
- 3230. Process.
- 3231. Appearance.
- 3232. — In general.
- 3233. — Special appearance.
- 3234. Time for proceedings; limitations and laches.
- 3235. Unclean hands.
- 3236. Estoppel and waiver.
- 3237. Stipulations.
- 3238. Abatement and revival.
- 3239. Continuance and stay.
- 3240. Consolidation and severance.
- 3241. Reference.
- 3242. Judge.
- 3243. — In general.
- 3244. — Bias, recusal, and disqualification.
- 3245. Jury.
- 3246. — In general.
- 3247. — Right to jury trial.
- 3248. — Selection and impaneling of jurors.
- 3249. Counsel.
- 3250. — In general.
- 3251. — Pro hac vice.
- 3252. — Disqualification.
- 3253. — Withdrawal and substitution.
- 3254. Indigent parties; proceedings in forma pauperis.
- 3255. — In general.
- 3256. — Counsel.
- 3257. Sanctions in general.
- 3258. — In general.
- 3259. — Discretion of lower court; abuse of discretion.
- 3260. Abusive, vexatious, or harassing litigation.
- 3261. Compromise and settlement.
- 3262. — In general.
- 3263. — Class actions.
- 3264. Proceedings for review.
- 3265. — In general.
- 3266. — Finality, certification, and leave to appeal.

**XVI. REVIEW.(Cont'd)**

- 3267. — Timeliness of appeal.
- 3268. — Supersedeas or stay.

**4. PLEADING.**

- 3271. In general.
- 3272. Amended and supplemental pleadings.
- 3273. — In general.
- 3274. — Complaint, petition, or other initial pleading.
- 3275. — Answer or other responsive pleading.
- 3276. — Amendment at or after trial.
- 3277. — Amendment to conform to evidence.
- 3278. — Amendment increasing demand, or adding cause of action or defense.
  - (1). In general.
  - (2). Punitive damages.
- 3279. Objections and exceptions; demurrer.
- 3280. Failure to state claim, and dismissal therefor.
- 3281. — In general.
- 3282. — Deference given to lower court in general.
- 3283. — Plenary, free, or independent review.
- 3284. — De novo review.
- 3285. — Review using standard applied below.
- 3286. — Discretion of lower court; abuse of discretion.
- 3287. — Review for correctness or error.
- 3288. — Review of lower court's proceedings concerning question.
- 3289. Judgment on the pleadings.
- 3290. Striking out.
- 3291. Making more definite and certain.
- 3292. Trial of issue by consent.
- 3293. Anti-SLAPP laws.

**5. SET-OFF, COUNTERCLAIM, AND CROSS-CLAIM.**

- 3301. In general.
- 3302. Pleading.
- 3303. Failure to state claim, and dismissal therefor.

**6. DISCOVERY.**

- 3311. In general.
- 3312. Perpetuation of testimony.

**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- 3313. Depositions.
- 3314. Interrogatories.
- 3315. Production of documents and other tangible things.
- 3316. Physical or mental examination of person.
- 3317. Admissions on request.
- 3318. Subpoena.
- 3319. — In general.
- 3320. — Quashing subpoena.
- 3321. Protective order.
- 3322. Work product privilege; trial preparation materials.
- 3323. Failure to disclose; sanctions.
- 3324. — In general.
- 3325. — Spoliation.
- 3326. Particular sanctions.
- 3327. — In general.
- 3328. — Exclusion of evidence.
- 3329. — Striking pleading.
- 3330. — Dismissal.
- 3331. — Default judgment.
- 3332. — Costs and fees.

**7. TRIAL.**

- 3341. In general.
- 3342. Right to open and close.
- 3343. Remarks and conduct of judge.
- 3344. Arguments and conduct of counsel.
- 3345. Submission of issues or questions to jury.
- 3346. — In general.
- 3347. — Interrogatories and special verdict forms.
- 3348. Instructions.
- 3349. Custody and conduct of jury.
- 3350. Post-trial proceedings in general.
- 3351. Mistrial.

**8. EVIDENCE AND WITNESSES IN GENERAL.**

- 3361. In general.
- 3362. Judicial notice.
- 3363. Presumptions and burden of proof.
- 3364. Reception of evidence.
- 3365. — In general.
- 3366. — Admission or exclusion of evidence in general.
- 3367. — Order of proof.

**XVI. REVIEW.(Cont'd)**

- 3368. — Reopening case.
- 3369. Relevance.
- 3370. Probative value and prejudicial effect.
- 3371. Best and secondary evidence.
- 3372. Demonstrative evidence.
- 3373. Admissions.
- 3374. Declarations.
- 3375. Hearsay.
- 3376. Documentary evidence.
- 3377. Parol or extrinsic evidence affecting writings.
- 3378. Witnesses in general.
- 3379. — In general.
- 3380. — Competency.
- 3381. — Examination.
- 3382. — Cross-examination.
- 3383. — Recall, re-examination, and re-cross-examination.
- 3384. — Credibility and impeachment.
- 3385. Opinion evidence in general.
- 3386. Expert evidence and witnesses.
- 3387. — In general.
- 3388. — Competency and qualifications.
- 3389. — Examination.
- 3390. — Cross-examination.
- 3391. — Recall, re-examination, and re-cross-examination.
- 3392. — Credibility and impeachment.
- 3393. Separation and exclusion of witnesses.
- 3394. Number of witnesses.
- 3395. Privileged communications and confidentiality.
- 3396. — In general.
- 3397. — Attorney-client privilege.
- 3398. Self-incrimination.

**9. VERDICT AND FINDINGS IN GENERAL.**

- 3401. In general.
- 3402. Conclusiveness and effect of verdict or findings in general.
- 3403. Province of, and deference to, lower court in general.
- 3404. Verdict or findings of jury in general.
- 3405. — In general.
- 3406. — Province of, and deference to, jury in general.
- 3407. — Passion, prejudice, or mistake.
- 3408. Verdict or findings of judge in general.



**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- 3409. — In general.
- 3410. — Province of, and deference to, factfinding judge in general.
- 3411. — Same effect as those of jury.
- 3412. Plenary, free, or independent review.
- 3413. De novo review.
- 3414. Discretion of lower court; abuse of discretion.
- 3415. Substitution of reviewing court's discretion or judgment.
- 3416. — In general.
- 3417. — Jury as factfinder below.
- 3418. — Judge as factfinder below.
- 3419. Fairness or justice.
- 3420. Reasonableness.
- 3421. — In general.
- 3422. — Jury as factfinder below.
- 3423. — Judge as factfinder below.
- 3424. Review for correctness or error in general.
- 3425. Clear error; "clearly erroneous" standard.
- 3426. — In general.
- 3427. — Jury as factfinder below.
- 3428. — Judge as factfinder below.
- 3429. — What constitutes clear error.
- 3430. Definite or firm conviction of mistake.
- 3431. Manifest or obvious error.
- 3432. — In general.
- 3433. — Jury as factfinder below.
- 3434. — Judge as factfinder below.
- 3435. — What constitutes manifest or obvious error.
- 3436. Plain or palpable error.

**10. SUFFICIENCY OF EVIDENCE.**

- 3441. In general.
- 3442. Jury as factfinder below in general.
- 3443. Judge as factfinder below in general.
- 3444. Character and amount of evidence in general.
- 3445. — In general.
- 3446. — Any evidence.
- 3447. — Scintilla of evidence.
- 3448. — Some evidence.
- 3449. — Adequate evidence.
- 3450. — Ample evidence.

**XVI. REVIEW.(Cont'd)**

- 3451. Competent or credible evidence in general.
- 3452. Credibility and number of witnesses.
- 3453. — In general.
- 3454. — Jury as factfinder below.
- 3455. — Judge as factfinder below.
- 3456. Inferences and conclusions drawn from evidence.
- 3457. — In general.
- 3458. — Reasonableness.
- 3459. Substantial evidence.
- 3460. — In general.
- 3461. — Jury as factfinder below.
- 3462. — Judge as factfinder below.
- 3463. — What constitutes substantial evidence.
- 3464. — Competent or credible evidence.
- 3465. Weight of evidence.
- 3466. — In general.
- 3467. — Province of, and deference to, lower court in general.
- 3468. — Jury as factfinder below.
- 3469. — Judge as factfinder below.
- 3470. — Preponderance or great weight of evidence.
- 3471. — Against weight of evidence.
  - (1). In general.
  - (2). Against preponderance or great weight of evidence.
- 3472. — Clear or plain weight; clearly or plainly contrary.
- 3473. — Manifest weight; manifestly contrary.
- 3474. Conflicting or disputed evidence.
- 3475. — In general.
- 3476. — Province of, and deference to, lower court in general.
- 3477. — Jury as factfinder below.
- 3478. — Judge as factfinder below.
- 3479. — Clear, manifest, or plain error.
- 3480. — Competent or credible evidence.
- 3481. — Reasonable basis or support.
- 3482. — Substantial evidence.
- 3483. — Credibility and number of witnesses.
  - (1). In general.
  - (2). Jury as factfinder below.
  - (3). Judge as factfinder below.

**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- 3484. Undisputed or uncontradicted evidence.
- 3485. Absence of evidence.
- 3486. — In general.
- 3487. — Absence of competent or credible evidence.
- 3488. — Total failure of proof.
- 3489. Review for factual or legal sufficiency; “no evidence” review.
- 3490. — In general.
- 3491. — Factual sufficiency in general.
- 3492. — Legal sufficiency or “no evidence” in general.
- 3493. — Jury as factfinder below.
  - (1). In general.
  - (2). Factual sufficiency.
  - (3). Legal sufficiency; “no evidence”.
- 3494. — Judge as factfinder below.
  - (1). In general.
  - (2). Factual sufficiency.
  - (3). Legal sufficiency; “no evidence”.

**11. VERDICT, FINDINGS, AND SUFFICIENCY OF EVIDENCE: ADDITIONAL CONSIDERATIONS.**

- 3501. In general.
- 3502. Multiple or successive verdicts.
- 3503. Special verdicts.
- 3504. General or special findings.
- 3505. Negative findings.
- 3506. Unchallenged findings.
- 3507. Failure or refusal of lower court to make findings.
- 3508. Implied findings.
- 3509. Proceedings in equity.
- 3510. — In general.
- 3511. — Sufficiency of evidence in general.
- 3512. — Weight of evidence.
- 3513. — Conflicting or disputed evidence.
- 3514. Proceedings before referee, master, commissioner, or auditor.
- 3515. — In general.
- 3516. — Clear, manifest, or plain error.
- 3517. — Sufficiency of evidence.
- 3518. — Approval of trial court.
  - (1). In general.
  - (2). Sufficiency of evidence.
- 3519. — Disapproval of trial court.
- 3520. Proceedings after waiver of jury trial.

**XVI. REVIEW.(Cont'd)**

- 3521. Proceedings on written evidence.
- 3522. — In general.
- 3523. — Province of, and deference to, lower court in general.
- 3524. — Clear, manifest, or plain error.
- 3525. — Affidavits and depositions.
- 3526. — Conflicting or disputed evidence.
- 3527. Proceedings on oral evidence; ore tenus proceedings.
- 3528. — In general.
- 3529. — Discretion of lower court; abuse of discretion.
- 3530. — Sufficiency of evidence; clear, manifest, plain, or palpable error.
  - (1). In general.
  - (2). Competent, credible, or substantial evidence.
  - (3). Conflicting or disputed evidence.
- 3531. — Matters of law.
- 3532. — Application of law to evidence or facts.
- 3533. — Undisputed evidence or facts.
- 3534. — Oral evidence in combination with other evidence.

**12. JUDGMENT IN GENERAL.**

- 3541. In general.
- 3542. Judgment by confession or consent.
- 3543. Judgment by default.
- 3544. Judgment after trial.
- 3545. — In general.
- 3546. — Nonjury trial.
- 3547. Proceedings after judgment in general.

**13. SUMMARY JUDGMENT.**

- 3551. In general.
- 3552. Deference given to lower court in general.
- 3553. Plenary, free, or independent review.
- 3554. De novo review.
- 3555. Review using standard applied below.
- 3556. Discretion of lower court; abuse of discretion.
- 3557. Review for correctness or error.
- 3558. Review of lower court’s proceedings concerning question.

**30. APPEAL AND ERROR****14. TAKING CASE OR QUESTION FROM JURY;  
JUDGMENT AS A MATTER OF LAW.**

- 3561. In general.
- 3562. Preverdict motions; direction of verdict.
- 3563. — In general.
- 3564. — Deference given to lower court in general.
- 3565. — Plenary, free, or independent review.
- 3566. — De novo review.
- 3567. — Review using standard applied below.
- 3568. — Discretion of lower court; abuse of discretion.
- 3569. — Review for correctness or error.
- 3570. — Sufficiency of evidence.
- 3571. Postverdict motions; judgment notwithstanding verdict (JNOV).
- 3572. — In general.
- 3573. — Deference given to lower court in general.
- 3574. — Plenary, free, or independent review.
- 3575. — De novo review.
- 3576. — Review using standard applied below.
- 3577. — Discretion of lower court; abuse of discretion.
- 3578. — Review for correctness or error.
- 3579. — Sufficiency of evidence.
- 3580. Demurrer to evidence.
- 3581. Dismissal or nonsuit at trial.
- 3582. Judgment on the evidence.
- 3583. Review of lower court's proceedings concerning question.

**15. RECONSIDERATION OR REHEARING  
IN GENERAL.**

- 3591. In general.
- 3592. Dismissal or nonsuit.
- 3593. Summary judgment.
- 3594. Taking case or question from jury; judgment as a matter of law.
- 3595. Review of lower court's proceedings concerning question.

**16. SETTING ASIDE VERDICT; NEW TRIAL.**

- 3601. In general.
- 3602. New trial in general.
- 3603. — In general.

**XVI. REVIEW.(Cont'd)**

- 3604. — Deference given to lower court in general.
- 3605. — Plenary, free, or independent review.
- 3606. — De novo review.
- 3607. — Review using standard applied below.
- 3608. — Discretion of lower court; abuse of discretion.
  - (1). In general.
  - (2). Grant of new trial.
  - (3). Denial of new trial.
- 3609. For errors or irregularities.
- 3610. — In general.
- 3611. — Errors of law in general.
- 3612. — Improper jury charge or instructions.
- 3613. — Misconduct of party or counsel.
- 3614. — Misconduct of or affecting jury.
- 3615. For insufficiency of evidence.
- 3616. — In general.
- 3617. — New trial.
  - (1). In general.
  - (2). Grant of new trial.
  - (3). Denial of new trial.
- 3618. For surprise, accident, inadvertence, or mistake.
- 3619. For newly discovered evidence.
- 3620. Setting aside verdict or findings of judge; new trial after bench trial.
- 3621. — In general.
- 3622. — For errors or irregularities.
- 3623. — For insufficiency of evidence.
- 3624. — For surprise, accident, inadvertence, or mistake.
- 3625. — For newly discovered evidence.
- 3626. Review of lower court's proceedings concerning question.

**17. RELIEF FROM JUDGMENT OR ORDER.**

- 3631. In general.
- 3632. Grant of relief in general.
- 3633. Denial of relief in general.
- 3634. Relief from dismissal or nonsuit.
- 3635. Relief from dismissal or judgment for failure to prosecute.
- 3636. Relief from default judgment.
- 3637. Review of lower court's proceedings concerning question.

**30. APPEAL AND ERROR****18. REMEDIAL MATTERS IN GENERAL.**

- 3641. In general.
- 3642. Equitable remedies in general.
- 3643. Creditors' remedies.
- 3644. — In general.
- 3645. — Prejudgment or provisional remedies in general.
- 3646. — Attachment.
- 3647. — Execution.
- 3648. — Garnishment.
- 3649. — Supplementary proceedings.
- 3650. — Postjudgment discovery.
- 3651. — Remedies against debtor's earnings, wages, and other income.
- 3652. — Collective remedies.
- 3653. Receivers and receivership.
- 3654. Constructive trust.
- 3655. Partition or forced sale of real property.
- 3656. Specific performance.
- 3657. Lis pendens.

**19. INJUNCTIVE RELIEF.**

- 3661. In general.
- 3662. Granting or refusing.
- 3663. Continuing, vacating, or dissolving.
- 3664. Preliminary injunction; temporary restraining order.

**20. MONETARY RELIEF.**

- 3671. In general.
- 3672. Damages in general.
- 3673. — In general.
- 3674. — Deference given to lower court in general.
- 3675. — Plenary, free, or independent review.
- 3676. — De novo review.
- 3677. — Review using standard applied below.
- 3678. — Discretion of lower court; abuse of discretion.
- 3679. — Review for correctness or error.
  - (1). In general.
  - (2). Mistake, passion, or prejudice; shocking conscience or sense of justice.
- 3680. — Sufficiency of evidence.
- 3681. Excessive award; remittitur.
- 3682. — In general.

**XVI. REVIEW.(Cont'd)**

- 3683. — Mistake, passion, or prejudice; shocking conscience or sense of justice.
- 3684. Inadequate award; additur.
- 3685. — In general.
- 3686. — Mistake, passion, or prejudice; shocking conscience or sense of justice.
- 3687. Particular cases and items.
- 3688. — In general.
- 3689. — General or special damages in general.
- 3690. — Contract cases in general.
- 3691. — Tort cases and personal injuries in general.
- 3692. — Mental or emotional injury; pain and suffering.
- 3693. — Loss of consortium.
- 3694. — Lost wages.
- 3695. — Death.
- 3696. — Injuries to property.
- 3697. — Nominal damages.
- 3698. — Liquidated damages.
- 3699. — Punitive or exemplary damages.
- 3700. Apportionment and contribution.
- 3701. Accounting.
- 3702. Disgorgement.
- 3703. Restitution.
- 3704. Interest.
- 3705. — In general.
- 3706. — Prejudgment interest.
- 3707. — Preverdict interest.
- 3708. Penalties.

**21. COSTS AND FEES.**

- 3711. In general.
- 3712. Attorney fees.
- 3713. — In general.
- 3714. — Authorization, eligibility, and entitlement in general; prevailing party.
- 3715. — Bad faith or meritless litigation.
- 3716. — Public interest and substantial benefit doctrine; private attorney general.
- 3717. — Items and amount; hours and rates.
- 3718. — Effect of offer of judgment or pretrial deposit or tender.
- 3719. Witness fees.

**30. APPEAL AND ERROR****22. SUBSTANTIVE MATTERS.**

- 3721. In general.
- 3722. Constitutional rights, civil rights, and discrimination in general.
- 3723. — In general.
- 3724. — Arrest and pretrial detention.
- 3725. — Imprisonment and incidents thereof.
- 3726. Torts in general.
- 3727. — In general.
- 3728. — Negligence in general.
- 3729. — Premises liability.
- 3730. — Products liability.
- 3731. — Fraud or misrepresentation.
- 3732. — Libel and slander.
- 3733. — False arrest or imprisonment.
- 3734. — Malicious prosecution and abuse of process.
- 3735. — Other particular torts.
- 3736. Property in general.
- 3737. — In general.
- 3738. — Adverse possession.
- 3739. — Conveyances and deeds.
- 3740. — Covenants.
- 3741. — Easements.
- 3742. — Real property sales; vendor and purchaser.
- 3743. — Real property leases; landlord and tenant.
- 3744. — Common interest communities.
- 3745. — Searches and seizures.
- 3746. Water.
- 3747. Governments and political subdivisions.
- 3748. — In general.
- 3749. — Torts.
- 3750. — Immunity.
- 3751. — Public records or information.
- 3752. Government property, facilities, and funds.
- 3753. Taxation.
- 3754. Labor and employment.
- 3755. — In general.
- 3756. — Public employment in general.
- 3757. — Pensions and benefit plans.
- 3758. — Labor relations.
- 3759. — Wages, hours, and working conditions.
- 3760. — Employment discrimination.
- 3761. Education.

**XVI. REVIEW.(Cont'd)**

- 3762. — In general.
- 3763. — Employment in education.
- 3764. Elections, voting, and political rights.
- 3765. Contracts.
- 3766. — In general.
- 3767. — Construction, interpretation, and application in general.
- 3768. — Particular cases and contracts.
  - (1). In general.
  - (2). Sales.
  - (3). Leases.
  - (4). Public contracts.
- 3769. — Agreements as to choice of law.
- 3770. — Agreements as to place of bringing suit; forum selection clauses.
- 3771. Trade, business, and finance.
- 3772. — In general.
- 3773. — Financial institutions.
- 3774. — Insurers and insurance.
- 3775. — Mortgages, liens, and security interests.
- 3776. Intellectual property.
- 3777. Animals and plants.
- 3778. — In general.
- 3779. — Agriculture and crops.
- 3780. Health care and medical insurance.
- 3781. Mental health.
- 3782. Public health.
- 3783. Motor vehicles.
- 3784. — In general.
- 3785. — Motor vehicle accidents.
- 3786. — Products liability.
- 3787. Carriers and public utilities.
- 3788. — In general.
- 3789. — Telecommunications.
- 3790. Families and children.
- 3791. Corporations and other organizations.
- 3792. Partnership.

**(E) MATERIAL CONSIDERED ON REVIEW.****1. IN GENERAL.**

- 3801. In general.
- 3802. Record in general.
- 3803. — In general.
- 3804. — Entire record.
- 3805. — On review of verdict, findings, and sufficiency of evidence.
  - (1). In general.

**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- (2). Entire record.
- 3806. Pleadings and evidence.
- 3807. — In general.
- 3808. — Attachments and exhibits.
- 3809. — All or part of evidence.
  - (1). In general.
  - (2). On review of verdict, findings, and sufficiency of evidence.
- 3810. — Improper or erroneously admitted evidence.
- 3811. — Excluded or stricken evidence.
- 3812. — Hearsay.
- 3813. Instructions and jury charge.
- 3814. Verdict and findings.
- 3815. Posttrial material.
- 3816. Evidence or other material not considered below.
- 3817. — In general.
- 3818. — Additional or new pleadings in reviewing court.
- 3819. — Taking judicial notice in reviewing court.
- 3820. — Taking evidence in reviewing court.
- 3821. Amendment in reviewing court of proceedings below.
- 3822. — In general.
- 3823. — As to parties.
- 3824. — As to pleadings.
  - (1). In general.
  - (2). To conform to evidence or correspond with verdict or judgment.
- 3825. Amendments regarded as made by reviewing court.
- 3826. — In general.
- 3827. — As to pleadings in general.
- 3828. — To conform to evidence or correspond with verdict or judgment.
- 3829. Concessions.
- 3830. Consideration of other cases and matters therein.

**2. ON REVIEW OF INJUNCTIVE RELIEF.**

- 3841. In general.
- 3842. Preliminary injunctive relief; temporary restraining order.

**3. ON REVIEW OF DAMAGES OR OTHER MONETARY RELIEF.**

- 3851. In general.
- 3852. Consideration of other cases and matters therein.

**4. ON REVIEW OF COSTS, FEES, OR SANCTIONS.**

- 3856. In general.
- 3857. Discovery sanctions.

**(F) PRESUMPTIONS AND BURDENS ON REVIEW.****1. IN GENERAL.**

- 3861. In general.
- 3862. Correctness or error.
- 3863. — In general.
- 3864. — Burden of showing correctness or error.
- 3865. Discretion of lower court.
- 3866. — In general.
- 3867. — Abuse of discretion.
- 3868. Matters of law.
- 3869. — In general.
- 3870. — Lower court's knowledge and application of law.
- 3871. — Conclusions of law.
- 3872. Matters of fact.
- 3873. Application of law to facts.
- 3874. Mixed questions of law and fact.

**2. PARTICULAR MATTERS AND RULINGS.**

- 3881. In general.
- 3882. Grounds, nature, and form of action.
- 3883. — In general.
- 3884. — Set-off, counterclaim, and cross-claim.
- 3885. Procedural matters and rulings in general.
- 3886. Rules of court in general.
- 3887. Motions, hearings, and orders in general.
- 3888. Defenses, objections, and exceptions in general.
- 3889. Dismissal and nonsuit in general.
- 3890. Voluntary dismissal or nonsuit.
- 3891. Failure to prosecute, and dismissal or nonsuit therefor.
- 3892. Pleading.
- 3893. — In general.
- 3894. — Amended and supplemental pleadings.

**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- 3895. — Objections and exceptions; demurrer.
- 3896. — Failure to state claim, and dismissal therefor.
- 3897. — Judgment on the pleadings.
- 3898. — Striking out.
- 3899. — Making more definite and certain.
- 3900. — Trial of issue by consent.
- 3901. — Anti-SLAPP laws.
- 3902. Jurisdiction and venue.
- 3903. — In general.
- 3904. — Pleading and dismissal.
- 3905. Conditions precedent.
- 3906. Mootness, ripeness, finality, and prematurity.
- 3907. Parties, process, and appearance.
- 3908. Time for proceedings; limitations and laches.
- 3909. — In general.
- 3910. — Pleading and dismissal.
- 3911. Continuance and stay; consolidation and severance.
- 3912. Reference.
- 3913. Discovery.
- 3914. — In general.
- 3915. — Failure to disclose; sanctions.
- 3916. Judge.
- 3917. Jury.
- 3918. Counsel.
- 3919. Trial.
- 3920. — In general.
- 3921. — Arguments and conduct of counsel.
- 3922. — Submission of issues or questions to jury.
- 3923. — Instructions.
- 3924. — Custody and conduct of jury.
- 3925. — Post-trial proceedings in general.
- 3926. — Mistrial.
- 3927. Evidence and witnesses in general.
- 3928. — In general.
- 3929. — Burden or standard of proof applied below.
- 3930. — Admissibility and reception of evidence.
- 3931. — Documentary evidence.
- 3932. — Witnesses and opinion evidence.

**XVI. REVIEW.(Cont'd)**

- 3933. — Expert evidence and witnesses.
- 3934. — Privileged communications and confidentiality.
- 3935. Verdict, findings, and sufficiency of evidence.
- 3936. — In general.
- 3937. — Jury as factfinder below in general.
- 3938. — Judge as factfinder below in general.
- 3939. — Review for factual or legal sufficiency; “no evidence” review.
- 3940. — Instructions understood or followed.
- 3941. — Evidence considered or disregarded.
- 3942. — Interrogatories and special verdicts.
- 3943. — Issues decided; theory of verdict or findings.
  - (1). In general.
  - (2). Multiple claims, theories, or defenses; general verdict rule.
- 3944. — Proceedings before referee, master, commissioner, or auditor.
- 3945. — Proceedings on written evidence.
- 3946. Judgment in general.
- 3947. — In general.
- 3948. — Judgment by default.
- 3949. — Judgment by confession or consent.
- 3950. Summary judgment.
- 3951. — In general.
- 3952. — Cross-motions.
- 3953. — Particular cases and contexts.
- 3954. Taking case or question from jury; judgment as a matter of law.
- 3955. — In general.
- 3956. — Preverdict motions; direction of verdict.
- 3957. — Postverdict motions; judgment notwithstanding verdict (JNOV).
- 3958. — Demurrer to evidence.
- 3959. — Dismissal or nonsuit at trial.
- 3960. — Judgment on the evidence.
- 3961. Reconsideration or rehearing.
- 3962. Setting aside verdict; new trial.
- 3963. Relief from judgment or order.
- 3964. — In general.

**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- 3965. — Relief from default judgment.
- 3966. Remedial matters in general.
- 3967. — In general.
- 3968. — Creditors' remedies.
- 3969. — Receivers and receivership.
- 3970. Injunctive relief.
- 3971. — In general.
- 3972. — Preliminary injunction; temporary restraining order.
- 3973. Monetary relief; damages.
- 3974. — In general.
- 3975. — Excessive award; remittitur.
- 3976. — Inadequate award; additur.
- 3977. — Punitive or exemplary damages.
- 3978. — Interest.
- 3979. Costs and fees.
- 3980. — In general.
- 3981. — Attorney fees.
- 3982. — Witness fees.
- 3983. Indigent parties; proceedings in forma pauperis.
- 3984. Sanctions in general.
- 3985. Abusive, vexatious, or harassing litigation.
- 3986. Compromise and settlement.
- 3987. Proceedings for review.
- 3988. — In general.
- 3989. — Making and contents of bill of exceptions, case, or statement of facts.
- 3990. — Making and contents of record.

**3. SILENT OR INADEQUATE RECORD.**

- 4001. In general.
- 4002. Completeness; partial or incomplete record.
- 4003. Ambiguities in record.
- 4004. Particular matters and rulings.
- 4005. — In general.
- 4006. — Pleading, dismissal, and nonsuit.
- 4007. — Exhibits and documentary evidence.
- 4008. — Submission of issues or questions to jury; instructions.
- 4009. — Verdict, findings, and sufficiency of evidence.
- (1). In general.

**XVI. REVIEW.(Cont'd)**

- (2). Absence of findings; assumed or implied findings.
- (3). Request for findings; failure to make request; waiver.
- 4010. — Summary judgment.
- 4011. — Taking case or question from jury; judgment as a matter of law.
- 4012. — Reconsideration or rehearing; setting aside verdict; new trial.
- 4013. — Remedial matters.
- 4014. — Costs, fees, and sanctions.
- 4015. Appeal on judgment roll.

**4. PROCEEDINGS ON ORAL EVIDENCE;  
ORE TENUS PROCEEDINGS.**

- 4021. In general.
- 4022. Presumption of correctness in general.
- 4023. Burden on review in general.
- 4024. Matters of law.
- 4025. Application of law to evidence or facts.
- 4026. Undisputed evidence or facts.
- 4027. Oral evidence in combination with other evidence.
- 4028. Silent or inadequate record; implied findings.

**(G) TRIAL ON REVIEW.**

- 4031. In general.
- 4032. Retrial on review in general.
- 4033. Trial de novo on review in general.
- 4034. Cases or matters triable in reviewing court; grounds for trial de novo.
- 4035. — In general.
- 4036. — In equitable proceedings.
- 4037. De novo proceedings after error is found by reviewing court.
- 4038. — In general.
- 4039. — Errors of law or fact in general.
- 4040. — Errors as to instructions.
- 4041. — Errors as to damages and apportionment of fault.
- 4042. Proceedings to obtain trial on evidence taken in lower court.
- 4043. — In general.
- 4044. — Requisites of record in general.
- 4045. — Necessity or requisites of certificate of evidence.
- 4046. — Time of certifying or filing evidence.



**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- 4047. — Necessity and requisites of statement of case.
- 4048. Scope of inquiry.
- 4049. — In general.
- 4050. — Effect of findings below.
- 4051. — Effect of errors below.
- 4052. Amendments.
- 4053. Additional or new pleadings.
- 4054. Evidence.
- 4055. Conduct of trial.

**(H) THEORY AND GROUNDS OF DECISION BELOW AND ON REVIEW.**

- 4061. In general.
- 4062. Narrowest or best possible grounds.
- 4063. Grounds not considered or relied upon below.
- 4064. Correct decision below based on incorrect grounds or reasoning.
- 4065. Particular orders or rulings below, theory and grounds supporting.
- 4066. — In general.
- 4067. — Parties; class certification.
- 4068. — Pleadings.
- 4069. — Dismissal or nonsuit.
- 4070. — Evidence.
- 4071. — Instructions.
- 4072. — Verdict, findings, sufficiency of evidence, and judgment.
  - (1). In general.
  - (2). Default judgment.
  - (3). Summary judgment.
- 4073. — Taking case or question from jury; judgment as a matter of law.
- 4074. — Reconsideration or rehearing; setting aside verdict; new trial.
- 4075. — Relief from judgment or order.
  - (1). In general.
  - (2). Relief from default judgment.
- 4076. — Injunctive relief.
- 4077. — Costs, fees, and sanctions.

**(I) RULINGS BELOW AS LAW OF THE CASE ON REVIEW.**

- 4081. In general.
- 4082. Rulings not challenged or appealed.
- 4083. Instructions.

**(J) WAIVER OF ERROR IN REVIEWING COURT.**

- 4091. In general.
- 4092. Implied waiver in general.
- 4093. Concessions, admissions, and agreements.
- 4094. Failure to assert or adequately discuss error.
- 4095. — In general.
- 4096. — Briefs and argument in general.
- 4097. — Citation to facts and legal authority in general.
- 4098. — Particular cases and contexts.
  - (1). In general.
  - (2). Jurisdiction.
  - (3). Pleadings.
  - (4). Evidence and trial.
  - (5). — In general.
  - (6). — Sufficiency of evidence; verdict, findings, and judgment.
  - (7). Summary judgment.
  - (8). Setting aside verdict; new trial.
  - (9). Damages or other relief.
  - (10). Costs and fees.
  - (11). Pro se litigants.
- 4099. Other conduct or proceedings inconsistent with objection.
- 4100. Express waiver.

**(K) REVIEW OF DECISIONS OF INTERMEDIATE COURTS.**

- 4101. In general.
- 4102. Scope and extent of review.
- 4103. — In general.
- 4104. — Questions of law or fact.
- 4105. — Discretion of intermediate or lower court.
- 4106. — Free, independent, or de novo review.
- 4107. Nature and grounds of intermediate court's decision, effect of.
- 4108. — In general.
- 4109. — Questions not raised or passed upon in intermediate court.
- 4110. — Affirmance by intermediate court.
- 4111. — Reversal by intermediate court.
- 4112. — Necessity and effect of findings by intermediate court.
- 4113. Cross-appeal.
- 4114. Permissive or discretionary review.
- 4115. — In general.

**30. APPEAL AND ERROR****XVI. REVIEW.(Cont'd)**

- 4116. — Cases or questions reported, reserved, or certified.
- 4117. Interlocutory rulings and appeals.
- 4118. Presumptions and burdens on review.

**(L) SUBSEQUENT REVIEW.**

- 4121. In general.
- 4122. Scope and extent of subsequent review in general.
- 4123. Subsequent review after remand in general.
- 4124. — In general.
- 4125. — Compliance with mandate or directions.
- 4126. Determination on prior review, effect on subsequent review.
- 4127. — In general.
- 4128. — As law of the case in general.
- 4129. — Persons concluded by prior determination.
- 4130. — Questions concluded by prior determination.
  - (1). In general.
  - (2). Grounds of claim or defense.
  - (3). Validity and interpretation of instrument.
  - (4). Constitutional questions.
  - (5). Jurisdiction and venue.
  - (6). Pleadings.
  - (7). Evidence.
  - (8). Trial, verdict, findings, and judgment.
  - (9). Amount of recovery or extent of relief.
  - (10). Costs and fees.
- 4131. — Prior determination not on merits.
- 4132. — Prior determination on interlocutory review.
  - (1). In general.
  - (2). Preliminary injunction; temporary restraining order.
- 4133. — Correctness of prior determination.
- 4134. — Effect of prior determination by higher court on subsequent review by intermediate court.

**XVI. REVIEW.(Cont'd)**

- 4135. — Effect of prior determination by intermediate court on subsequent review by higher court.
- 4136. Matters which could have been raised or determined on prior review.
- 4137. Matters expressly or implicitly determined on prior review.
- 4138. Matters arising after prior review.
- 4139. — In general.
- 4140. — New or different facts; changes to pleadings or evidence.
- 4141. — Change in law.
- 4142. — Change in court.

**XVII. HARMLESS AND REVERSIBLE ERROR.****(A) IN GENERAL.**

- 4151. In general.
- 4152. Substantiality; substantial error.
- 4153. Materiality; material error.
- 4154. Prejudice; prejudicial error.
- 4155. — In general.
- 4156. — Prejudice and substantiality; prejudice and materiality.
- 4157. Relation between error and final outcome or result.
- 4158. — In general.
- 4159. — Outcome or result correct on merits.
- 4160. — Party not entitled to succeed in any event.
- 4161. Technical or formal error.
- 4162. Structural, fundamental, or constitutional error.
- 4163. Justice or injustice.
- 4164. — In general.
- 4165. — Substantial justice or injustice.
- 4166. — Miscarriage of justice.
- 4167. Discretion of lower court; abuse of discretion.

**(B) PARTICULAR ERRORS.****1. IN GENERAL.**

- 4171. In general.
- 4172. Nature and form of remedy in general.
- 4173. Preliminary proceedings in general.
- 4174. Dismissal and nonsuit in general.
- 4175. Voluntary dismissal or nonsuit.

**30. APPEAL AND ERROR****XVII. HARMLESS AND REVERSIBLE  
ERROR.(Cont'd)**

- 4176. Failure to prosecute, and dismissal or nonsuit therefor.
- 4177. Dockets and case management.
- 4178. Conferences and scheduling orders.
- 4179. Motions in limine.
- 4180. Jurisdiction.
- 4181. Venue.
- 4182. Forum non conveniens.
- 4183. What law governs.
- 4184. Parties.
- 4185. — In general.
- 4186. — Standing.
- 4187. — New parties; joinder.
- 4188. — Dismissal of parties.
- 4189. — Intervention.
- 4190. — Class actions.
- 4191. Process and appearance.
- 4192. Time for proceedings; limitations and laches.
- 4193. Continuance and stay.
- 4194. Consolidation and severance.
- 4195. Reference.
- 4196. Judge.
- 4197. — In general.
- 4198. — Bias, recusal, and disqualification.
- 4199. Jury.
- 4200. — In general.
- 4201. — Right to jury trial.
- 4202. — Selection and impaneling of jurors.
  - (1). In general.
  - (2). Sustaining challenge or excusing juror.
  - (3). Overruling challenge or declining to excuse juror.
- 4203. Counsel.
- 4204. — In general.
- 4205. — Pro hac vice.
- 4206. — Disqualification.
- 4207. — Withdrawal and substitution.
- 4208. Indigent parties; proceedings in forma pauperis.
- 4209. — In general.
- 4210. — Counsel.
- 4211. Sanctions in general.
- 4212. Abusive, vexatious, or harassing litigation.

**XVII. HARMLESS AND REVERSIBLE  
ERROR.(Cont'd)**

- 4213. Compromise and settlement.
  - 4214. — In general.
  - 4215. — Class actions.
  - 4216. Proceedings for review.
- 2. PLEADING.**
- 4221. In general.
  - 4222. Complaint, petition, or other initial pleading.
  - 4223. Answer or other responsive pleading.
  - 4224. Amended pleadings.
  - 4225. — In general.
  - 4226. — Complaint, petition, or other initial pleading.
  - 4227. — Answer or other responsive pleading.
  - 4228. — To conform to proof.
  - 4229. Supplemental pleadings.
  - 4230. Signature and verification.
  - 4231. Demurrers and exceptions.
  - 4232. — In general.
  - 4233. — Sustaining demurrer or exception.
    - (1). In general.
    - (2). To answer or other responsive pleading.
    - (3). Error cured by amendment.
  - 4234. — Overruling demurrer or exception.
    - (1). In general.
    - (2). To answer or other responsive pleading.
    - (3). Error cured by amendment.
  - 4235. Failure to state claim, and dismissal therefor.
  - 4236. — In general.
  - 4237. — Sustaining motion.
  - 4238. — Denial of motion.
  - 4239. — Effect of trial or determination.
  - 4240. Judgment on the pleadings.
  - 4241. Striking out.
  - 4242. — In general.
  - 4243. — Sustaining motion.
  - 4244. — Denial of motion.
  - 4245. — Striking out part of pleading.
  - 4246. — Effect of trial or determination.
  - 4247. Making more definite and certain.
  - 4248. Election between counts, causes of action, or defenses.

**30. APPEAL AND ERROR****XVII. HARMLESS AND REVERSIBLE  
ERROR.(Cont'd)**

- 4249. Withdrawal.
- 4250. Anti-SLAPP laws.
- 4251. Variance between pleadings and proof.

**3. DISCOVERY.**

- 4261. In general.
- 4262. Depositions.
- 4263. Interrogatories.
- 4264. Production of documents and other tangible things.
- 4265. Physical or mental examination of person.
- 4266. Admissions on request.
- 4267. Subpoena.
- 4268. Protective order.
- 4269. Work product privilege; trial preparation materials.
- 4270. Failure to disclose; sanctions.

**4. CONDUCT OF TRIAL OR HEARING IN GENERAL.**

- 4281. In general.
- 4282. Separate trials in same cause; bifurcation.
- 4283. Right to open and close.
- 4284. View and inspection.
- 4285. Remarks and conduct of judge.
- 4286. Mistrial.

**5. EVIDENCE IN GENERAL.**

- 4291. In general.
- 4292. Judicial notice.
- 4293. Presumptions and burden of proof.
- 4294. Striking out or withdrawal.
- 4295. Order of proof, rebuttal, and reopening case.

**6. WITNESSES IN GENERAL.**

- 4301. In general.
- 4302. Competency.
- 4303. Form of question.
- 4304. — In general.
- 4305. — Leading questions.
- 4306. Refreshing memory of witness.
- 4307. Error in question cured by answer or failure to answer.
- 4308. Cross-examination and re-examination.
- 4309. Credibility, impeachment, contradiction, and corroboration.

**XVII. HARMLESS AND REVERSIBLE  
ERROR.(Cont'd)**

- 4310. Separation and exclusion of witnesses.
- 4311. Number of witnesses.
- 4312. Privileged communications and confidentiality.
- 4313. — In general.
- 4314. — Attorney-client privilege.
- 4315. Self-incrimination.

**7. ADMISSION OF EVIDENCE.**

- 4321. In general.
- 4322. Relevancy, competency, and materiality of evidence in general.
- 4323. Particular cases or issues, evidence relating to.
- 4324. — In general.
- 4325. — Negligence and torts in general.
- 4326. — Contracts in general.
- 4327. — Labor and employment.
- 4328. — Insurance.
- 4329. — Automobiles, carriers, and highways.
- 4330. — Damages and amount of recovery.
- 4331. Particular types of evidence.
- 4332. — In general.
- 4333. — Best and secondary evidence.
- 4334. — Demonstrative evidence.
- 4335. — Admissions, declarations, and hearsay.
- 4336. — Documentary evidence.
- 4337. — Parol or extrinsic evidence affecting writings.
- 4338. — Opinions and conclusions in general.
- 4339. — Expert evidence.
- 4340. Facts otherwise established.
- 4341. — In general.
- 4342. — By undisputed facts or evidence thereof.
- 4343. — By admission of facts.
- 4344. Same or similar evidence otherwise admitted; cumulative evidence.
- 4345. — In general.
- 4346. — Particular cases.
- 4347. Error cured.
- 4348. — In general.
- 4349. — By evidence subsequently admitted.

**30. APPEAL AND ERROR****XVII. HARMLESS AND REVERSIBLE  
ERROR.(Cont'd)**

- 4350. — By withdrawal or striking out.
- 4351. — By jury instructions.
  - (1). In general.
  - (2). Instructions to disregard.
  - (3). Instructions limiting scope of evidence.
- 4352. Evidence admitted without preliminary proof.
- 4353. Evidence in nonjury trials.
- 4354. Relation between error and final outcome or result.
- 4355. — In general.
- 4356. — Particular cases or issues.
- 4357. Party not entitled to succeed in any event.

**8. EXCLUSION OF EVIDENCE.**

- 4361. In general.
- 4362. Relevancy, competency, and materiality of excluded evidence in general.
- 4363. Particular cases or issues, exclusion of evidence relating to.
- 4364. — In general.
- 4365. — Negligence and torts in general.
- 4366. — Contracts in general.
- 4367. — Labor and employment.
- 4368. — Insurance.
- 4369. — Automobiles, carriers, and highways.
- 4370. — Damages and amount of recovery.
- 4371. Particular types of excluded evidence.
- 4372. — In general.
- 4373. — Best and secondary evidence.
- 4374. — Demonstrative evidence.
- 4375. — Admissions, declarations, and hearsay.
- 4376. — Documentary evidence.
- 4377. — Parol or extrinsic evidence affecting writings.
- 4378. — Opinions and conclusions in general.
- 4379. — Expert evidence.
- 4380. Facts otherwise established.
- 4381. — In general.
- 4382. — By undisputed facts or evidence thereof.
- 4383. — By admission of facts.

**XVII. HARMLESS AND REVERSIBLE  
ERROR.(Cont'd)**

- 4384. Same or similar evidence otherwise admitted; cumulative evidence.
- 4385. — In general.
- 4386. — Other testimony of same witness.
- 4387. — Similar testimony of other witnesses.
- 4388. Erroneous exclusion cured.
- 4389. — In general.
- 4390. — By jury instructions.
- 4391. Excluded evidence insufficient or improper for purpose offered.
- 4392. Evidence excluded in nonjury trials.
- 4393. Relation between excluded evidence and final outcome or result.
- 4394. — In general.
- 4395. — Particular cases or issues.
- 4396. Party not entitled to succeed in any event.

**9. ARGUMENTS AND CONDUCT OF COUNSEL.**

- 4401. In general.
- 4402. Particular arguments or conduct.
- 4403. — In general.
- 4404. — Opening statement in general.
- 4405. — Presentation of evidence in general.
- 4406. — Stating or reading and commenting on proceedings in cause.
- 4407. — Matters not sustained by evidence.
- 4408. — Comments on evidence or witnesses.
- 4409. — Comments on failure to produce evidence or call witnesses.
- 4410. — Comments on character or conduct of parties or counsel.
- 4411. — Appeals to sympathy or prejudice.
- 4412. — Reference to insurance or other indemnity.
- 4413. Refusal of court to permit argument or conduct.
- 4414. Failure of court to restrain erroneous argument or conduct.
- 4415. Relation between error and final outcome or result.

**30. APPEAL AND ERROR****10. SUBMISSION OF ISSUES OR  
QUESTIONS TO JURY.**

- 4421. In general.
- 4422. Interrogatories and special verdict forms.
- 4423. Failure or refusal to submit issues.
- 4424. Withdrawal of questions from jury.
- 4425. Questions of law.
- 4426. Immaterial issues.

**11. INSTRUCTIONS.**

- 4431. In general.
- 4432. Nature of defect in general.
- 4433. Form and language in general.
- 4434. Applicability of instructions to case in general.
- 4435. — In general.
- 4436. — Abstract propositions.
- 4437. Particular cases or issues, instructions relating to.
- 4438. — In general.
- 4439. — Negligence and torts in general.
- 4440. — Contracts in general.
- 4441. — Labor and employment.
- 4442. — Insurance.
- 4443. — Automobiles and highways.
  - (1). In general.
  - (2). Passengers, pedestrians, and children in general.
  - (3). Motorcycles.
  - (4). Bicycles.
- 4444. — Carriers and railroads.
- 4445. — Damages and amount of recovery.
- 4446. Evidence and witnesses, instructions relating to.
- 4447. — In general.
- 4448. — Presumptions and burden of proof.
- 4449. — Comment on evidence; invading province of jury.
- 4450. Excluding or ignoring issues, defenses, or evidence.
- 4451. Number of instructions; conflict or repetition.
- 4452. Relation between error and final outcome or result.
- 4453. — In general.
- 4454. — Finding on one of several issues; “two-issue” rule.

**XVII. HARMLESS AND REVERSIBLE  
ERROR.(Cont'd)**

- 4455. — Damages and amount of recovery.
- 4456. Party not entitled to succeed in any event.
- 4457. Failure or refusal to instruct.
- 4458. — In general.
- 4459. — Relation between error and final outcome or result in general.
- 4460. — Particular cases or issues.
  - (1). In general.
  - (2). Negligence and torts in general.
  - (3). Contracts in general.
  - (4). Labor and employment.
  - (5). Insurance.
  - (6). Automobiles and highways.
  - (7). Carriers and railroads.
  - (8). Damages and amount of recovery.

**12. CONDUCT AND DELIBERATIONS OF JURY.**

- 4471. In general.
- 4472. Taking papers and articles to jury room.
- 4473. Recalling jury and further instructions.

**13. VERDICT, FINDINGS, AND SUFFICIENCY  
OF EVIDENCE.**

- 4481. In general.
- 4482. Verdict or findings of jury in general.
- 4483. Verdict or findings of court or referee in general.
- 4484. Particular cases.
- 4485. — In general.
- 4486. — Tort cases.
- 4487. — Contract cases.
- 4488. Conflicting verdicts or findings; inconsistency.
- 4489. Special verdicts or findings.
- 4490. Failure or refusal of lower court to make findings.
- 4491. — In general.
- 4492. — Failure or refusal to find on part of issues.
- 4493. Delay in making findings.
- 4494. Findings without evidence.
- 4495. Unnecessary or irrelevant findings.

**30. APPEAL AND ERROR****14. CONCLUSIONS OF LAW.**

- 4501. In general.
- 4502. Confusion of findings and conclusions.

**15. JUDGMENT.**

- 4511. In general.
- 4512. Summary judgment.
- 4513. Default judgment.
- 4514. Formal requisites; entry, record, and docketing.
- 4515. Parties liable.
- 4516. Proceedings after judgment in general.

**16. TAKING CASE OR QUESTION FROM JURY; JUDGMENT AS A MATTER OF LAW.**

- 4521. In general.
- 4522. Preverdict motions; direction of verdict.
- 4523. Postverdict motions; judgment notwithstanding verdict (JNOV).
- 4524. Demurrer to evidence.
- 4525. Dismissal or nonsuit at trial.
- 4526. Judgment on the evidence.

**17. RECONSIDERATION OR REHEARING.**

- 4531. In general.
- 4532. Setting aside verdict; new trial.

**18. RELIEF FROM JUDGMENT OR ORDER.**

- 4541. In general.
- 4542. Relief from default judgment.

**19. REMEDIAL MATTERS.**

- 4551. In general.
- 4552. Creditors' remedies.
- 4553. Injunctive relief.
- 4554. — In general.
- 4555. — Preliminary injunction; temporary restraining order.
- 4556. Monetary relief; damages.
- 4557. — In general.
- 4558. — Excessive award; remittitur.
- 4559. — Inadequate award; additur.
- 4560. — Punitive or exemplary damages.

**20. COSTS AND FEES.**

- 4571. In general.
- 4572. Attorney fees.

**(C) CUMULATIVE ERROR.**

- 4581. In general.
- 4582. Particular cases and contexts.

**(D) ERRORS FAVORABLE TO PARTY COMPLAINING.**

- 4591. In general.
- 4592. Pleadings and rulings thereon.
- 4593. Rulings as to evidence.
- 4594. Submission of issues or questions to jury.
- 4595. Instructions.
- 4596. Verdict, findings, and judgment.
- 4597. Form of recovery and extent of relief.
- 4598. Post-trial proceedings.

**(E) PRESUMPTIONS AND BURDENS AS TO HARMLESS AND REVERSIBLE ERROR.**

- 4601. In general.
- 4602. Rulings as to evidence.
- 4603. Instructions.

**XVIII. DETERMINATION AND DISPOSITION OF CAUSE.****(A) IN GENERAL.**

- 4611. In general.
- 4612. On review of intermediate court in general.
- 4613. As to parties not appealing or complaining in general.
- 4614. Relief not requested by parties in general.
- 4615. Findings and conclusions by reviewing court.
- 4616. — In general.
- 4617. — Authority to find facts.
- 4618. — Conclusions of law.
- 4619. Effect of change in law.
- 4620. Effect of change in facts.
- 4621. Effect of death or change of parties.
- 4622. Effect of divided court.

**(B) AFFIRMANCE.**

- 4631. In general.
- 4632. On motion in general.
- 4633. Insufficient presentation of case or questions.
- 4634. Error not shown.
- 4635. — In general.

**30. APPEAL AND ERROR****XVIII. DETERMINATION AND DISPOSITION  
OF CAUSE.(Cont'd)**

4636. — As to part of grounds of decision; “two-issue” rule.
4637. Defects or errors on part of appellant.
4638. Reversal ineffectual or not beneficial.
4639. Conditional affirmance.
4640. Effect of affirmance.

**(C) MODIFICATION.****1. IN GENERAL.**

4651. In general.
4652. On motion in general.
4653. Amendment of defects and correction of errors.
4654. Modifying judgment, decree, or order.
4655. — In general.
4656. — Injunction.

**2. MODIFICATION AS TO AMOUNT  
OR EXTENT OF RECOVERY.**

4661. In general.
4662. Reducing amount of recovery; remittitur.
4663. Increasing amount of recovery; additur.
4664. Interest.
4665. Costs and fees.

**(D) REVERSAL.**

4671. In general.
4672. On motion in general.
4673. Particular errors and defects.
4674. — In general.
4675. — Jurisdiction.
4676. — Pleadings.
4677. — Admission or exclusion of evidence.
4678. — Instructions.
4679. — Verdict, findings, and conclusions.
4680. — Judgments and orders.
4681. — Taking case or question from jury; judgment as a matter of law.
4682. — Setting aside verdict; new trial.
4683. — Interlocutory judgments and orders.
4684. Amount or extent of recovery.
4685. — In general.
4686. — Nominal damages.

**XVIII. DETERMINATION AND DISPOSITION  
OF CAUSE.(Cont'd)**

4687. — Punitive or exemplary damages.
4688. — Interest.
4689. — Costs and fees.
4690. Reversal in part.
4691. — In general.
4692. — As to damages and costs.
4693. Reversal as to one or more coparties.
4694. — In general.
4695. — As to parties not appealing.
4696. Conditional reversal.
4697. Effect of reversal.
4698. — In general.
4699. — Effect on dependent judgments or proceedings.
4700. — Rights of third persons and parties not before appellate court.

**(E) RENDITION OF JUDGMENT  
BY REVIEWING COURT.**

4711. In general.
4712. Rendition after reversal in general.
4713. Particular cases and contexts.
4714. — In general.
4715. — Evidence, verdict, and findings.
4716. — Nonjury trials.
4717. — Proceedings in equity.
4718. — Summary judgment.
4719. Rendition after affirmance.
4720. Rendition after modification.
4721. Rendition after reviewing court conducts de novo proceedings upon finding error.
4722. Time and mode of rendition.
4723. Form and requisites.
4724. Entry and record.
4725. — In general.
4726. — Entry nunc pro tunc.
4727. Amendment, modification, or setting aside.

**(F) DIRECTING NEW TRIAL OR OTHER FURTHER  
PROCEEDINGS IN LOWER COURT;  
REMAND.**

4731. In general.
4732. Remand without decision in general.
4733. Particular errors and defects warranting further proceedings below.
4734. — In general.



**30. APPEAL AND ERROR****XVIII. DETERMINATION AND DISPOSITION  
OF CAUSE.(Cont'd)**

- 4735. — Issues not addressed below in general.
- 4736. — Applicable legal theory or standard in general.
- 4737. — Parties.
- 4738. — Pleadings.
- 4739. — Right to jury trial; selection of jurors.
- 4740. — Course and conduct of trial.
- 4741. — Sufficiency of evidence.
- 4742. — Verdict, findings, and judgment.
- 4743. — Summary judgment.
- 4744. — Taking case or question from jury; judgment as a matter of law.
- 4745. — Setting aside verdict; new trial.
- 4746. — Damages or other relief.
- 4747. — Costs and fees.
- 4748. — Transcript, record, and statement of facts.
- 4749. Directing further proceedings below on certain issues only; limited or partial remand.
- 4750. — In general.
- 4751. — Particular issues.
  - (1). In general.
  - (2). Damages or other relief.
  - (3). Costs and fees.
- 4752. Granting leave to amend.
- 4753. Ordering reference or recommitment to referee.
- 4754. Directing judgment in lower court.
- 4755. — In general.
- 4756. — Judgment in conformity to verdict or findings.
- 4757. — Judgment of dismissal.
- 4758. Directing judgment or further proceedings after affirmance.
- 4759. Directing judgment or further proceedings after modification.

**(G) COMPELLING OR DIRECTING RESTITUTION.**

- 4771. In general.
- 4772. After modification.
- 4773. After reversal.

**(H) MANDATE OR ORDER OF REVIEWING COURT.**

- 4781. In general.
- 4782. Necessity.

**XVIII. DETERMINATION AND DISPOSITION  
OF CAUSE.(Cont'd)**

- 4783. Making and issuance.
- 4784. Payment of fees or costs.
- 4785. Form and requisites.
- 4786. Transmission and filing in lower court.

**(I) EFFECT IN LOWER COURT OF DECISION  
OF REVIEWING COURT.****1. IN GENERAL.**

- 4791. In general.
- 4792. Mandate or order in general.
- 4793. Opinion of reviewing court in general.
- 4794. Particular cases and decisions.

**2. DECISION OF REVIEWING COURT AS LAW  
OF THE CASE IN LOWER COURT.**

- 4801. In general.
- 4802. Mandate rule in general.
- 4803. Particular cases and decisions.
- 4804. Effect of change in facts.
- 4805. Effect of change in law.

**(J) COURSE AND CONDUCT OF FURTHER  
PROCEEDINGS IN LOWER COURT.**

- 4811. In general.
- 4812. Powers and duties of lower court.
- 4813. — In general.
- 4814. — Jurisdiction of lower court after remand.
- 4815. — Compliance with mandate or directions.
- 4816. — Opening, vacating, modification, or amendment of judgment or order.
- 4817. — Amendment of pleadings.
  - (1). In general.
  - (2). Matters which may be presented by new or amended pleadings.
- 4818. — Amendment as to parties.
- 4819. — Granting new trial or rehearing.
- 4820. Proceedings after remand.
- 4821. — In general.
- 4822. — Time to proceed after remand.
- 4823. — Dismissal or nonsuit after remand.
- 4824. — Proceedings relating to reference.
- 4825. Enforcement of judgment or order affirmed.
- 4826. Interest on judgment affirmed.
- 4827. Enforcement of judgment of appellate court.

**31. APPEARANCE****XVIII. DETERMINATION AND DISPOSITION  
OF CAUSE.(Cont'd)**

- 4828. Rendition and entry of judgment or order as directed.
- 4829. — In general.
- 4830. — Allowance of damages, interest, and costs.
- 4831. Making or compelling restitution.
- 4832. New trial.
- 4833. — In general.
- 4834. — Preliminary proceedings.
- 4835. — Scope of issues.
  - (1). In general.
  - (2). Scope of decision of appellate court.
  - (3). Directions in remittitur.
- 4836. — Conduct of trial.
- 4837. — Evidence.
- 4838. — Instructions to jury.
- 4839. Failure to obey mandate or follow decision of appellate court.

**(K) JURISDICTION AND PROCEEDINGS OF  
REVIEWING COURT AFTER REMAND.**

- 4841. In general.
- 4842. Recall or return of cause from lower court.
- 4843. Amendment or modification of judgment.
- 4844. Amendment or correction of mandate or remittitur.

**XIX. LIABILITIES ON BONDS  
AND UNDERTAKINGS.**

- 4851. In general.
- 4852. Discharge of sureties.
- 4853. Accrual or release of liability by breach or fulfillment of conditions.
- 4854. — In general.
- 4855. — Dismissal, quashing, or vacation of proceeding.
- 4856. — Affirmance or reversal of judgment or order.
- 4857. Extent of liability.
- 4858. — In general.
- 4859. — Damages.
- 4860. — Interest.
- 4861. — Costs and fees.
- 4862. Payment and distribution among persons entitled.

**XIX. LIABILITIES ON BONDS AND  
UNDERTAKINGS.(Cont'd)**

- 4863. Judgment against sureties in reviewing court.
- 4864. Summary remedies.
- 4865. Actions.
- 4866. — In general.
- 4867. — Right of action and form of remedy.
- 4868. — Conditions precedent.
- 4869. — Defenses.
- 4870. — Jurisdiction and venue.
- 4871. — Time to sue; limitations.
- 4872. — Parties.
- 4873. — Pleading.
- 4874. — Evidence.
- 4875. — Trial, judgment, and review.

**31. APPEARANCE****SUBJECTS INCLUDED**

Acts or proceedings by which parties to civil actions in general place themselves before the court, personally or by representation

Nature, requisites and validity of entry of notice of appearance, and filing and service thereof

General or special appearance; what constitutes and operation and effect thereof as submission to jurisdiction and waiver of objections thereto, or of objections to process or service thereof

Withdrawal of or setting aside appearance

Effect of failure to appear

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Attorney's authority to appear, see ATTORNEYS AND LEGAL SERVICES

Default judgment on failure to appear, and opening default, see JUDGMENT

Intervention in actions by persons not parties, see PARTIES

Justices of the peace, appearance in proceedings before, see JUSTICES OF THE PEACE

**31. APPEARANCE**

Particular classes of persons, appearance by, see INFANTS, CORPORATIONS AND BUSINESS ORGANIZATIONS and other specific topics

Particular classes of proceedings, appearance in, see CREDITORS' REMEDIES and other specific topics

1. Nature of proceeding.
2. Right of defendant to appear.
3. Authority to enter appearance for another.
4. Time for appearance.
5. Entry and record of appearance.
6. Notice of retainer and appearance.
7. Proceedings constituting appearance.
8. — In general.
  - (1). In general.
  - (2). Acceptance or admission of service.
  - (3). Filing plea, answer, or demurrer.
  - (4). Motions.
  - (5). Appearance as witness.
  - (6). Appearance by stipulation.
  - (7). Appearance in attachment or other collateral proceedings.
  - (8). Proceedings constituting an appearance after judgment.
9. — General or special appearance.
  - (1). In general.
  - (2). Objections to jurisdiction in general.
  - (3). Objections relating to process or service.
  - (4). Filing plea, answer, or demurrer.
  - (5). Motions in general.
  - (6). Petition for removal to federal court.
  - (7). Appearance in attachment or other collateral proceedings.
  - (8). Proceedings constituting a general appearance after judgment.
10. — General appearance after special appearance.
11. Operation and effect in general.
  - 11.1. — In general.
12. — Relation of party to cause in general.
13. — Rights acquired by defendant.
14. — Effect as to nature and extent of remedy.
15. — Effect of unauthorized appearance.
16. Jurisdiction acquired.

17. — In general.
18. — Of cause of action.
19. — Of the person.
  - (1). In general.
  - (2). By demurrer.
  - (3). Special appearance.
  - (4). Appearance by nonresident.
  - (5). Contemporaneous plea or objection to jurisdiction and to the merits.
  - (6). Appearance after change of venue.
20. Waiver of process or notice.
21. Waiver of objections.
22. — In general.
23. — Venue or change of venue.
24. — Defects in process or service.
  - (1). In general.
  - (2). Formal requisites of writ in general.
  - (3). Signing.
  - (4). Error as to time when writ is returnable.
  - (5). Defects in service in general.
  - (6). Filing or service of complaint or declaration.
  - (7). Service by publication.
  - (8). Time of service.
  - (9). Service procured by fraud.
  - (10). Motions.
  - (11). Defects in return.
  - (12). Effect of special appearance.
  - (13). Effect of general appearance after special appearance.
25. — Defects or irregularities in pleading or other proceedings.
26. Effect of appearance after judgment.
27. Withdrawal.
28. Setting aside or striking out.
29. Failure to appear.

**34. ARMED SERVICES****SUBJECTS INCLUDED**

Air, land and naval forces of the general government

**34. ARMED SERVICES**

Militia called into service of the general government and volunteers

Organization and discipline of such forces

Officers of the armed services, and their appointment, discharge, resignation, dismissal, rank, rights, powers, duties and liabilities

Soldiers, sailors, marines, airmen, etc., and their enlistment, conscription and discharge, pay and other rights, duties and liabilities

Aid and relief to members of armed forces and to their families, etc.

Relation of military forces to civil authorities in general

Insurance and indemnity

Veterans' benefits

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Bounties and pensions for military service, see BOUNTIES and PENSIONS

Courts-martial, see MILITARY JUSTICE

Defense contracts, see UNITED STATES, WAR AND NATIONAL EMERGENCY

Militia not called into the service of the general government, see MILITIA

Veterans' preference for public employment, see MUNICIPAL CORPORATIONS, PUBLIC EMPLOYMENT

War, employment and operation of armed services in, and their subjection to martial law, see WAR AND NATIONAL EMERGENCY

- I. IN GENERAL, ¶1-54.
- II. INSURANCE AND INDEMNITY, ¶55-100.
- III. VETERANS' BENEFITS, ¶101-169.
- (A) IN GENERAL, ¶101-129.
- (B) ADMINISTRATIVE PROCEEDINGS, ¶130-149.
- (C) REVIEW OF ADMINISTRATIVE PROCEEDINGS, ¶150-169.

**I. IN GENERAL.**

1. Power to maintain, regulate, and control.
2. Sources and authority of military law.
3. Relation of military to civil authority.
  - (1). In general.
  - (2). Posse comitatus.
4. Establishment and organization.

**I. IN GENERAL.(Cont'd)**

5. Persons in the armed services, and militia called into service of the United States.
  - (1). In general.
  - (2). National Guard and militia.
  - (3). Discharge, retirement, and resignation in general.
  - (4). Conscientious objection.
  - (5). Sexual orientation; gender identity.
  - (6). Pay and allowances.
  - (7). Correction of records.
  - (8). Judicial intervention or review.
6. Officers.
  - 6.1. — In general.
  - 6.2. — Correction of records in general.
  - 6.3. — Evaluation and rating.
7. — Appointment and promotion.
  - (1). In general.
  - (2). Correction of records.
  - (3). Judicial intervention or review.
8. — Rank and grade.
9. — Resignation.
10. — Retirement.
11. — Discharge or dismissal.
  - (1). In general.
  - (2). Grounds in general.
  - (3). Conscientious objection.
  - (4). Sexual orientation; gender identity.
  - (5). Proceedings in general.
  - (6). Correction of records.
  - (7). Judicial intervention or review.
12. — Reinstatement.
13. — Pay and allowances in general.
  - (1). In general.
  - (2). Reserve officers.
  - (3). Captured or missing officers.
- 13.1. — Basic pay and special pay.
  - (1). In general.
  - (2). Army officers in general.
  - (3). Naval and Marine Corps officers in general.
  - (4). Air Force officers in general.
  - (5). Brevet officers.
  - (6). Service academy instructors.
  - (7). Extra pay in general.
  - (8). Sea duty.
  - (9). Foreign duty.

**34. ARMED SERVICES****I. IN GENERAL.**(Cont'd)

- (10). Incentive pay for hazardous duty.
- (11). Aides.
- (12). Exercising command above grade.
- (13). Mounted pay.
- (14). Leave or waiting orders.
- (15). Dismissal or discharge, and reinstatement.
- (16). Mustering out pay.
- 13.2. — Longevity pay.
  - (1). In general.
  - (2). Service creditable in general.
  - (3). Cadets and midshipmen, service as.
  - (4). Appointment from civil life.
- 13.3. — Allowances.
  - (1). In general.
  - (2). Rental and subsistence.
  - (2.1). — In general.
  - (3). — Officers entitled in general.
  - (4). — Field duty or sea duty.
  - (5). — Dependency in general.
  - (6). — Dependency of mother of officer.
  - (7). — Assignment of quarters.
  - (8). — Adequacy of quarters.
  - (9). — Rations.
  - (10). Travel and transportation.
  - (10.1). — In general.
  - (11). — Travel orders.
  - (12). — Discharge or release from active duty.
  - (13). — Leave or waiting orders.
  - (14). — Amount and computation in general.
  - (15). — Mileage.
  - (16). — Allowance for dependents.
  - (17). Medical assistance.
  - (18). Compensation for loss of property.
- 13.4. — Forfeiture and stoppage.
- 13.5. — Retirement pay.
  - (1). In general.
  - (2). Army officers in general.
  - (3). Naval and Marine Corps officers in general.
  - (4). Air Force officers in general.
  - (5). Disability retirement.

**I. IN GENERAL.**(Cont'd)

- (5.1). — In general.
- (5.2). — Proceedings.
- (5.3). — Judicial review.
- (6). Reserve officers.
- (7). Supernumeraries.
- (8). Longevity pay.
- (9). Allowances.
- (10). Recall to active duty.
- (11). Termination and other employment.
- (12). Survivor benefits.
- 13.6. — Recovery of pay and allowances.
  - (1). In general.
  - (2). Evidence.
- 13.7. — Recovery back of payments and set-off of debts.
- 14. — Rights and privileges.
- 15. — Authority and duties.
- 16. Service academies and cadets.
- 17. Enlistment.
- 18. — In general.
- 18.5. — Reenlistment.
- 19. — Minors.
- 20. Compulsory service and drafts.
- 20.1. — Statutory provisions.
  - (.5). In general.
  - (1). Power of Congress.
  - (2). Validity of statutes.
  - (3). Construction and operation.
- 20.2. — Administrative regulations.
- 20.3. — Registration.
- 20.4. — Persons liable for training and service.
  - (1). In general.
  - (2). Aliens and nonresidents.
- 20.5. — Manner of selection; quotas.
- 20.6. — Deferments and exemptions.
  - (1). In general.
  - (2). Agricultural deferments.
  - (3). Conscientious objectors.
  - (4). Governmental officers and employees.
  - (5). Marriage or dependent relative.
  - (6). Ministers and students preparing for ministry.
- 20.7. — Substitutes and purchases of release.

**34. ARMED SERVICES****I. IN GENERAL.**(Cont'd)

- 20.8. — Selective Service System and proceedings.
  - (1). In general.
  - (2). Jurisdiction and powers of boards.
  - (3). Classification.
  - (4). Reopening classification and re-classification.
  - (5). Evidence.
  - (6). Hearing.
  - (7). Appeal.
  - (8). Reference.
  - (9). Records and files.
  - (10). Order to report and notice.
- 20.9. — Judicial review of Selective Service decisions.
  - (1). In general.
  - (2). Exhaustion of administrative remedies.
  - (3). Scope of review in general.
  - (4). Finality of boards' decisions.
  - (5). Questions of fact and findings.
- 20.10. — Induction and status of selectees.
  - (1). In general.
  - (2). Induction.
  - (3). Physicians, dentists, and allied specialists.
- 20.11. — Other matters.
- 21. Enlisted personnel.
  - 21.1. — In general.
  - 21.2. — Correction of records in general.
  - 21.3. — Promotion, rank, and grade.
- 22. — Discharge.
  - (1). In general.
  - (2). Grounds in general.
  - (3). Conscientious objection.
  - (4). Sexual orientation; gender identity.
  - (5). Proceedings in general.
  - (6). Correction of records.
  - (7). Judicial intervention or review.
- 22.5. — Retirement.
- 23. — Pay and allowances in general.
- 23.1. — Basic pay and special pay.
  - (1). In general.
  - (2). Extra pay in general.
  - (3). Extra duty, additional pay for.
  - (4). Incentive pay for hazardous duty.
  - (5). Officers' training.

**I. IN GENERAL.**(Cont'd)

- (6). Discharge and reinstatement; mustering out pay.
- 23.2. — Longevity pay.
- 23.3. — Allowances.
  - (1). In general.
  - (2). Travel and transportation.
  - (3). Rations and quarters and commutation thereof.
  - (4). Compensation for loss of property.
- 23.4. — Retirement pay.
  - (1). In general.
  - (2). Grade.
  - (3). Disability retirement.
  - (4). Survivor benefits.
- 23.5. — Recovery of pay and allowances.
- 24. — Rights and privileges.
- 25. — Duties.
- 26. Paymasters, pursers, disbursing officers, and agents.
- 27. Civilian employees.
  - (1). In general.
  - (2). Promotion.
  - (3). Compensation and benefits.
  - (4). Adverse employment action in general.
  - (5). Discharge, retirement, and resignation.
  - (6). Proceedings.
  - (7). Judicial intervention or review.
- 28. Forts, posts, and bases.
  - (1). In general.
  - (2). Access.
  - (3). Closure and realignment.
- 29. Vessels and navy yards.
- 30. Medals of honor.
- 31. Civil status of persons in armed services.
- 32. Civil liabilities of persons in armed services.
  - 32.1. — In general.
- 33. — To one another.
- 34. — To civilians, in general.
  - (1). In general.
  - (2). Liabilities for military acts, in general.
  - (3). Taking or destroying property.
- 34.1. Civil relief; suspension of enforcement of liabilities.

**34. ARMED SERVICES****I. IN GENERAL.**(Cont'd)

- 34.2. — In general.
  - (1). In general.
  - (2). Statutory provisions.
  - (3). Purpose and construction of statutes.
  - (4). Discretionary or mandatory.
  - (5). Prejudice and existence of good defense.
  - (6). Grounds for denial of relief in general; waiver.
  - (7). Procedure and relief in general.
- 34.3. — Persons protected.
  - (1). In general.
  - (2). Corporations, partnerships and third persons.
  - (3). Dependents and family.
  - (4). Insurer's rights, and effect of indemnity.
  - (5). Nature and time of service; availability notwithstanding service.
  - (6). Secondary liability; comakers, sureties and endorsers.
- 34.4. — Particular subjects of relief.
  - (1). In general.
  - (2). Assistance in meeting obligations; insurance premiums.
  - (3). Bail bonds.
  - (4). Divorce and domestic relations.
  - (5). Fines and penalties.
  - (6). Installment contracts.
  - (7). Interest rate.
  - (8). Process, witnesses and other incidental proceedings.
- 34.5. — Default of appearance, appointment of attorney and relief against judgments.
  - (1). In general.
  - (2). Affidavits.
  - (3). Attorney, appointment and compensation.
  - (4). Default.
  - (5). Procedure.
- 34.6. — Leases; eviction and distress.
- 34.7. — Mortgages.
  - (1). In general.
  - (2). Procedure.
  - (3). Relief granted; conditions.
- 34.8. — Stay or vacation of executions, attachments or garnishments.

**I. IN GENERAL.**(Cont'd)

- 34.9. — Stay of particular actions.
  - (1). In general.
  - (2). Divorce and domestic relations cases.
  - (3). Tort cases.
  - (4). Procedure.
  - (5). Relief granted; duration and termination of stay.
- 34.10. — Taxes and public lands.
- 34.11. — Time limitations.
  - (1). In general.
  - (2). Redemption.
- 34.12. — Effect of relief or of violation of rights.
- 35. Offenses by persons in armed services.  
*Courts-martial, see MILITARY JUSTICE.*
- 36. — In general.
- 37. — Mutiny.
- 38. — Desertion.
- 39. — Minor violations of articles of war, or of service regulations.
- 40. Offenses by persons not in armed services in general.
  - (1). In general.
  - (2). Causing insubordination, disloyalty, mutiny, or refusal of duty.
  - (3). Obstructing recruiting or enlistment service.
  - (4). Relating to desertion.
  - (5). Relating to government property.
  - (6). Indictment and information.
  - (7). Evidence.
  - (8). Trial and sentence.
- 40.1. Compulsory service or draft evasion.
  - (1). In general.
  - (2). Counseling, aiding, or abetting evasion.
  - (3). False statements.
  - (4). Failure to report change of status or address.
  - (5). Violation of induction order.
  - (6). Evasion of civilian service required of conscientious objectors.
  - (7). Defenses.
  - (8). Indictment and information.
  - (9). Presumptions and burden of proof.
  - (10). Admissibility of evidence.

**34. ARMED SERVICES****I. IN GENERAL.**(Cont'd)

- (11). Weight and sufficiency of evidence.
- (11.1). — In general.
- (12). — Violation of induction order.
- (13). — Exempt or deferred status and classification.
- (14). Trial in general; scope of inquiry.
- (15). Questions for jury.
- (16). Instructions.
- 41. Courts of inquiry.
- 50. Aid or relief to families of persons in armed services.
- 54. Battlefields and monuments.

**II. INSURANCE AND INDEMNITY.**

- 55. War risk and life insurance.
- 56. — In general.
- 57. — Nature and purpose.
- 58. — Statutory provisions.
  - (1). In general.
  - (2). Validity.
  - (3). Construction and operation in general.
  - (4). Amendment and repeal.
  - (5). Retroactive operation.
- 59. — Official regulations.
- 60. — Persons entitled.
- 61. — Insurable interest.
- 62. — Contract or policy.
- 63. — Construction of contract or policy.
- 64. — Conversion of term insurance into elected policies.
- 65. — Premiums.
- 66. — Cancellation, surrender, or rescission.
- 67. — Reformation of policy.
- 68. — Commencement and duration of risk.
- 69. — Forfeiture or lapse.
  - (1). In general.
  - (2). Nonpayment of premiums.
  - (3). Reinstatement or revival.
  - (4). Application of compensation, bonus, or deposit to prevent lapse or to revive insurance.
- 70. — Estoppel or waiver of right to avoid or forfeit insurance.

**II. INSURANCE AND INDEMNITY.**(Cont'd)

- 71. — Incontestability.
- 72. — Risks and causes of death or disability.
- 73. — Total and permanent disability.
  - (1). In general.
  - (2). Absolute incapacity.
  - (3). Inability to follow substantially gainful occupation.
  - (4). Inability to follow usual calling.
  - (5). Effect of actual employment.
- 74. — Accrual of liability.
- 75. — Presentation and proof of claim.
- 76. — Adjustment and discharge of liability.
- 77. — Right to proceeds.
  - (1). In general.
  - (2). Persons who may be beneficiaries.
  - (3). Designation of beneficiaries in general.
  - (4). Testamentary designation of beneficiaries.
  - (5). Change of beneficiaries.
  - (6). Vested interests of beneficiaries.
  - (7). Invalid or ineffective designation of beneficiaries.
  - (8). Failure to make designation of beneficiaries.
  - (9). Payments to guardians or other representatives.
  - (10). Trusts.
  - (11). Payment to and distribution of estate of insured in general.
  - (12). Persons entitled to proceeds and their respective shares.
  - (13). Time with reference to which persons entitled to proceeds are determined.
  - (14). What law governs; preemption.
  - (15). Rights of persons claiming under or through beneficiaries.
  - (16). Estoppel, waiver, or forfeiture of rights of beneficiaries.
  - (17). Rights of creditors of insured.
  - (18). Rights of creditors of beneficiaries.
  - (19). Actions and proceedings to determine rights.
- 78. — Assignments and transfers.
- 79. — Actions on policies.



**34. ARMED SERVICES****II. INSURANCE AND INDEMNITY.(Cont'd)**

- (1). In general.
- (2). Nature and form.
- (3). Conditions precedent.
- (3.1). — In general.
- (4). — Disagreement.
- (5). — Filing and rejection of claim.
- (6). Defenses.
- (7). Jurisdiction and venue.
- (8). Time to sue, limitations, and laches.
- (13). Parties, process and appearance.
- (14). Pleading.
- (18). Presumptions and burden of proof.
- (18.1). — In general.
- (21). — Permanent and total disability.
- (22). Admissibility of evidence.
- (24). Weight and sufficiency of evidence.
- (24.1). — In general.
- (25). — Degree and character of proof required.
- (26). — Delay in making claim.
- (27). — Fraud.
- (28). — Disability of insured in general.
- (29). — Performance of work or preparation therefor.
- (30). — Nature of ailment in general.
- (31). — Mental or nervous disorder.
- (32). — Tuberculosis.
- (33). — Right to proceeds.
- (34). — Change of beneficiary.
- (36). Trial in general.
- (37). Scope of inquiry.
- (38). Questions for jury.
- (38.1). — In general.
- (39). — Fraud.
- (40). — Extent of disability.
- (41). — Performance of work or preparation therefor.
- (42). — Nature of ailment in general.
- (43). — Mental or nervous disorder.
- (44). — Tuberculosis.

**II. INSURANCE AND INDEMNITY.(Cont'd)**

- (45). Instructions.
- (48). Judgment and relief awarded.
- 80. — Costs and attorney fees.
- 81. — Offenses and penalties.
- 82. — Effect on rights of action against third person.
- 83. Servicemen's indemnity.

**III. VETERANS' BENEFITS.**

*Excludes pensions on retirement, see ARMED SERVICES* ¶5(6), 13.5, and 23.4, and insurance, see *ARMED SERVICES* ¶55 et seq.

**(A) IN GENERAL.**

- 101. In general.
- 101.1. Constitutional, statutory and regulatory provisions.
- 102. Veterans' administration, boards, and officers.
- Excludes proceedings on claims for benefits, see ARMED SERVICES* ¶130 et seq.
- 102.1. Eligibility for benefits.
- 103. Aid and relief for indigents.
- 104. Compensation for disability.
- 104.1. — In general.
  - (1). In general.
  - (2). Examination.
  - (3). Rating and amount.
  - (4). Service connection.
  - (5). Evidence.
- 104.2. — Physical disability.
  - (1). In general.
  - (2). Examination.
  - (3). Rating and amount.
  - (4). Service connection.
  - (5). Evidence.
- 104.3. — Psychiatric disability.
  - (1). In general.
  - (2). Examination.
  - (3). Rating and amount.
  - (4). Service connection.
  - (5). Evidence.
- 104.5. Death benefits; dependency and indemnity compensation.
- 105. Education and training.
  - (1). In general.
  - (2). Period of eligibility.
- 106. Extension of patents.
- 107. Hospitalization and medical care.

**34. ARMED SERVICES****III. VETERANS' BENEFITS.(Cont'd)**

- 108. Loans and housing.
- 108.1. — In general.
- 109. — Price limitation.
- 110. — Recovery of overcharges.
  - (1). In general.
  - (2). Actions.
- 111. — Rental housing.
- 112. — Offenses.
- 113. Employment and reemployment.
- 113.1. — In general.
- 114. — Statutory provisions.
  - (1). In general.
  - (2). Liberal construction.
- 115. — Veterans and service members entitled.
  - (1). In general.
  - (2). Governmental officers and employees.
  - (3). Employment in general.
  - (4). Temporary employment or position.
  - (5). Contract of employment.
  - (6). Independent contractors.
  - (7). Leaving position for training or service.
  - (8). Qualification for position.
- 116. — Employers obligated.
- 117. — Application for employment or reemployment.
- 118. — Position applied for, held, or restorable.
  - (1). In general.
  - (2). Particular positions.
  - (3). Compensation.
  - (4). Seniority.
  - (5). Apprenticeship, classification, and promotion.
  - (6). Vacation and sick pay.
  - (7). Collective bargaining agreements.
- 119. — Change of circumstances.
- 120. — Adverse employment actions.
  - (1). In general.
  - (2). Particular adverse actions.
  - (3). Discharge.
- 121. — Waiver.
- 122. — Actions or proceedings for enforcement.
  - (1). In general.

**III. VETERANS' BENEFITS.(Cont'd)**

- (2). Jurisdiction and venue.
- (3). Parties and pleading.
- (4). Evidence in general.
- (5). Weight and sufficiency of evidence.
- (6). Judgment and relief; damages.
- 123. Readjustment assistance and allowances.
- 124. Soldiers' homes.
- 125. Burial.
- 126. Waiver or forfeiture of benefits.
- 127. Recoupment of overpayments.

**(B) ADMINISTRATIVE PROCEEDINGS.**

- 130. In general.
- 132. Claims procedures in general.
  - (1). In general.
  - (2). Form and requisites of claim in general.
  - (3). Well-grounded claim.
  - (4). Determination.
- 133. Agency assistance.
  - (1). In general.
  - (2). When duty arises.
  - (3). Scope of duty in general.
  - (4). Records.
  - (5). Medical examination or opinion.
- 134. Reopening claims.
  - (1). In general.
  - (2). New and material evidence in general.
  - (3). Particular cases.
- 134.5. Clear and unmistakable error.
- 135. Board of veterans appeals.
- 136. — In general.
- 137. — Proceedings for review.
- 138. — Notice of disagreement.
- 139. — Scope of review.
- 140. — Hearing.
- 141. — Findings.
- 142. — Determination.
- 143. — Rehearing.
- 144. Fees of agents and attorneys.

**(C) REVIEW OF ADMINISTRATIVE PROCEEDINGS.**

- 150. In general.
- 151. Jurisdiction.
- 152. Exhaustion of remedies.
- 153. Decisions reviewable.

**34. ARMED SERVICES****III. VETERANS' BENEFITS.**(Cont'd)

- 154. Court of Appeals for Veterans Claims (formerly Court of Veterans Appeals).
- 155. — In general.  
*Establishment and organization of Court of Appeals for Veterans Claims, see FEDERAL COURTS* ¶2005.
- 156. — Jurisdiction.
- 157. — Exhaustion of remedies.
- 158. — Decisions reviewable.
- 159. — Presentation or reservation of grounds for review.
- 160. — Proceedings for review.
  - (1). In general.
  - (2). Notice of appeal in general.
  - (3). Time for proceedings.
- 161. — Effect of transfer or proceedings therefor.
- 162. — Record.
- 163. — Summary disposition.
- 164. — Representation by attorneys or others.
- 165. — Scope of review.
  - (1). In general.
  - (2). Trial de novo.
  - (3). Presumptions.
  - (4). Discretion.
  - (5). Questions of fact and findings.
  - (6). Harmless error.
- 166. — Determination.
- 167. — Remand.
- 168. Further review.
- 169. Extraordinary jurisdiction and relief.

**35. ARREST****SUBJECTS INCLUDED**

- Taking and keeping persons in legal custody to answer demands in civil actions or charges of crime, or to prevent commission of crime
- Nature and scope of the remedy in both civil and criminal cases in general; in what cases, and to and against whom, it is allowed
- Privilege from arrest

- Grounds of arrest and jurisdiction over and proceedings to obtain arrest
- Investigatory stop or stop and frisk
- Issuance, requisites and validity of writs, warrants, orders of arrest, etc., in civil actions, and amendment thereof
- Authority to arrest, making arrests and service of writs, warrants, etc.
- Quashing, vacating or setting aside process or orders for arrest, discharge from custody of poor debtors, etc., and other relief against arrest
- Securities to procure arrest, liabilities thereon and enforcement thereof
- Wrongfully procuring or making arrests, liabilities of persons other than officers

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Actions for violations of constitutional rights of arrestees, see also CIVIL RIGHTS
- Bail, admission to, and rights and liabilities of bail, see BAIL
- Commencing civil actions, arrest as a means of, see PROCESS
- Contempt proceedings, arrests involving, see CONTEMPT ¶56
- Debt, constitutional prohibitions of imprisonment for, see CONSTITUTIONAL LAW ¶1106
- Habeas corpus, writs of, see HABEAS CORPUS
- Illegal arrest, liabilities for, see FALSE IMPRISONMENT
- Judgment, motions in arrest of, see CRIMINAL LAW and JUDGMENT
- Ne exeat, writs of, see NE EXEAT
- Offenses committed in making or resisting arrest or delivering prisoner from custody, see ASSAULT AND BATTERY, HOMICIDE, OBSTRUCTING JUSTICE, ESCAPE, RESCUE
- Officers' duties and liabilities in respect of arrests, care and custody of prisoners, escapes, etc., see CLERKS OF COURTS, SHERIFFS AND CONSTABLES, PRISONS, and other specific topics
- Parole violators, arrest of, see PARDON AND PAROLE ¶80
- Particular classes of persons, liability of to arrest, see INFANTS and other specific topics

**35. ARREST**

Probation violators, arrest of, see SENTENCING AND PUNISHMENT §2012

Review of decisions in civil actions relating to arrest, see APPEAL AND ERROR

Stop or arrest for traffic violation or other vehicle code violation, see AUTOMOBILES §349; searches incident to such a stop or arrest, see AUTOMOBILES §349.5

Vessels, arrest of, see ADMIRALTY

Warrants for arrest in criminal prosecutions, see CRIMINAL LAW

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**I. IN CIVIL ACTIONS, §1-57.**

**II. ON CRIMINAL CHARGES, §57.1-73.**

**I. IN CIVIL ACTIONS.**

1. Nature and purpose of remedy.
3. Statutory provisions.
4. Actions in which arrest is authorized.
5. Existence of, or resort to, other remedy.
6. Persons entitled.
7. Persons liable.
8. — In general.
9. — Privileges and exemptions.
10. Grounds.
- 10.1. — In general.
11. — Nonresidence.
12. — Absconding, absence, or concealment.
13. — Nature of cause of action.
14. — Acts in official or fiduciary capacity.
15. — Fraud in contracting or incurring liability.
16. — Fraudulent removal or disposition of property.
17. — Acts preventing replevin of chattel.
18. Waiver or loss of right.
19. Jurisdiction and authority to grant.
20. Proceedings to procure in general.
21. Affidavits for arrest.
22. — In general.
23. — Persons who may make.
24. — Formal requisites.
25. — Averments in general.
26. — Averments as to parties.
27. — Knowledge or information.
28. — Averments as to cause of action and indebtedness.
29. — Averments as to grounds for arrest.

**I. IN CIVIL ACTIONS.(Cont'd)**

30. — Filing and service.
31. — Amendment and supplemental affidavits.
32. — Defects, objections, and waiver.
33. Writ, warrant, or order.
34. Bond, undertaking, or other security to procure arrest.
35. Complaint or other pleading.
36. Service of process or order.
37. Making arrest.
38. Return of process or order.
39. Custody and disposition of prisoner.
40. Proceedings to support or enforce arrest.
41. Quashing or vacating.
42. — In general.
43. — Grounds.
44. — Motions and proceedings thereon.
45. — Operation and effect.
46. Discharge on motion.
47. — In general.
48. — Grounds.
49. — Motions and proceedings thereon.
50. — Operation and effect.
51. Discharge on prison limits bond.
52. Discharge on surrender of or disclosure as to property.
53. Discharge of poor debtors.
54. Rearrest.
55. Second arrest.
56. Liabilities on bonds or undertakings.

**II. ON CRIMINAL CHARGES.**

- 57.1. In general.
- 57.2. What is an arrest.
- 57.3. — In general.
- 57.4. — Particular cases.
- 57.5. Time when an arrest occurs, in general.
- 57.6. — In general.
- 57.7. — Particular cases.
- 57.8. What law governs.
58. Grounds and purpose in general.
- 58.1. Right to be arrested in general.
59. Persons liable.
- 59.1. — In general.
60. — Privileges and exemptions.
- 60.1. Pre-arrest issues; police-citizen encounters.
- (1). In general.

**35. ARREST****II. ON CRIMINAL CHARGES.(Cont'd)**

- (2). Casual, routine, or random encounters.
- (3). Tests for determining propriety.
- (4). Particular cases.
- 60.2. Investigatory stop or stop and frisk.
  - (1). In general.
  - (2). What is a stop or investigatory stop.
  - (3). — In general.
  - (4). — Particular cases.
  - (5). Necessity for cause for arrest.
  - (6). Grounds for stop or investigation.
  - (7). — In general.
  - (8). — Profiling.
  - (9). — Collective knowledge.
  - (10). — Reasonableness; reason or founded suspicion, etc.
  - (11). — After-acquired information.
  - (12). — Pursuit.
  - (13). — Particular cases.
  - (14). Mode of stop.
  - (15). Warnings.
  - (16). Arrest distinguished.
  - (17). — In general.
  - (18). — Particular cases.
  - (19). Justification for pat-down search.
  - (20). Duration of detention and extent or conduct of investigation or frisk.
- 60.3. Motor vehicle stops.
  - (1). In general.
  - (2). Particular cases.
  - (3). Duration of detention and extent or conduct of investigation.
- 60.4. What constitutes a seizure or detention.
  - (1). In general.
  - (2). Particular cases.
- 62. Authority to arrest without warrant in general.
- 63. Officers and assistants, arrest without warrant.
  - 63.1. — In general.
  - 63.2. — Who may arrest.
  - 63.3. — Presence of, or fresh pursuit by, officer.
  - 63.4. — Probable or reasonable cause.
    - (.5). In general.

**II. ON CRIMINAL CHARGES.(Cont'd)**

- (1). Grounds for warrantless arrest in general.
- (2). What constitutes such cause in general.
- (3). Suspicion or rumor.
- (4). Time of existence; after-acquired information.
- (5). Nature of offense; felony or misdemeanor.
- (6). Nature and source of information in general.
- (7). Information from others.
  - (7.1). — In general.
- (8). — Reliability of informer.
- (9). — Corroboration.
- (10). — Anonymous or unidentified informers.
- (11). — Other officers or official information.
- (12). — Identification or description of offender or vehicle.
- (13). Personal knowledge or observation in general.
- (14). Legality of officers' presence, search, or other conduct.
- (15). Appearance, acts, and statements of persons arrested.
- (16). Possession, disposal, or concealment of article; flight or hiding.
- (17). Arrested person's presence or association.
- (18). Evidence.
- 64. Private persons, arrest without warrant.
- 65. Authority under warrant.
- 66. Place of arrest or stop.
  - (1). In general.
  - (2). Officer's authority outside jurisdiction.
  - (3). Pursuit.
- 67. Time for arrest.
- 68.1. Mode of making arrest.
  - (1). In general.
  - (2). Language use.
  - (3). Time or duration of arrest.
  - (4). Use of force.
  - (5). Restraints.
- 68.2. Intrusion or entry to arrest.
  - (1). In general.

**36. ARSON****II. ON CRIMINAL CHARGES.**(Cont'd)

- (2). What is an "entry".
- (3). Arrest without arrest warrant.
- (4). — In general.
- (5). — Exigent circumstances.
- (6). — Probable cause.
- (7). — Pursuit.
- (8). — Controlled substances.
- (9). — Nature of offense.
- (10). Entry with warrant.
- (11). Announcement of purpose.
- (12). Consent.
- 69. Summoning bystanders.
- 70. Custody and disposition of prisoner.
  - (1). In general.
  - (2). Presentation to magistrate, etc.; arraignment.
- 71. Property in possession of prisoner in general.
- 71.1. Search.
  - (1). In general.
  - (2). Probable cause; offense in officer's presence.
    - (2.1). — In general.
  - (3). — Narcotics cases.
  - (4). Scope of search.
    - (4.1). — In general.
  - (5). — Particular places or objects.
  - (6). — Persons and personal effects; person detained for investigation.
  - (7). Bona fides and validity of arrest; practicability of procuring warrant.
  - (8). Search not incident to arrest; time and distance factors.
  - (9). Mode of search or of observing grounds for arrest; force, trespass or consent.
  - (10). Curing defects in arrest or search; disclosure of different offense or offender.
  - (12). Powers of citizens or particular officers.
- 72. Rearrest.
- 73. Second arrest.

**36. ARSON****SUBJECTS INCLUDED**

Malicious burning of, or setting fire to or attempting to burn, buildings or other structures and property therein

Nature and elements of the crimes of arson, house-burning, etc., and of degrees thereof, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Civil liability for—

Injuries from fire caused by negligence, see NEGLIGENCE, ELECTRICITY, EXPLOSIVES, RAILROADS

Willful or criminal burning or setting fires, see FIRES

Woods, prairies, fields, crops, etc., offenses of burning or setting fire to and of refusing to aid in or obstructing extinguishment, see FIRES

- 1. Nature and elements of offenses.
- 2. — In general.
- 3. — Intent.
- 4. — Malice.
- 5. — Character of property.
- 6. — Value of property.
- 7. — Situation of property.
- 8. — Occupancy of building.
- 9. — Ownership or possession of property.
- 10. — Time.
- 11. — Burning or setting fire.
- 12. Degrees.
- 13. Attempts.
- 14. Defenses.
- 15. Persons liable.
- 17. Indictment or information.
- 17.1. — In general.
- 18. — Requisites and sufficiency in general.
- 19. — Intent and malice.
- 20. — Description of property.
- 21. — Occupancy of building.
- 22. — Ownership or possession of property.
- 23. — Burning or setting fire.
- 24. — Attempt.

**36. ARSON**

- 25. — Issues, proof, and variance.
- 26. Evidence.
- 26.1. — In general.
- 27. — Presumptions and burden of proof.
- 28. — Admissibility in general.
- 29. — Intent and malice.
- 30. — Description and ownership or possession of property.
- 31. — Motive.
- 32. — Threats, preparations, and previous attempts.
- 33. — Identity, presence, and acts of accused.
- 34. — Incriminating circumstances.
- 35. — Matters of defense.
- 36. — Rebuttal.
- 37. — Weight and sufficiency.
  - (1). In general.
  - (2). Intent.
  - (3). Ownership and insurance.
- 38. Trial.
- 39. — In general.
- 40. — Questions for jury.
- 41. — Instructions.
- 42. — Verdict.
- 45. Sentence and punishment.

**37. ASSAULT AND BATTERY****SUBJECTS INCLUDED**

Acts of violence towards the person of another, with or without actual touching or striking, not constituting an element in, or attempt to commit, any other specific injury or offense

Justification or excuse for such acts, and circumstances of aggravation

Liabilities and remedies therefor, civil or criminal

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Criminal sexual assault, see SEX OFFENSES  
 Death, assault resulting in civil liability, see DEATH

Motor vehicles, assaults by operation of, see AUTOMOBILES

Obstructing process or resisting officer, assaults committed in, see OBSTRUCTING JUSTICE

**Other offenses—**

Commission of assault with intent to, or in attempt to, perpetrate, see HOMICIDE, ROBBERY, SEX OFFENSES

Convictions of assault in prosecutions for, see INDICTMENTS AND CHARGING INSTRUMENTS

Unlawful arrest, assaults in connection with, see FALSE IMPRISONMENT

**I. IN GENERAL, ¶101–110.****II. CRIMINAL OFFENSES, ¶111–290.****(A) IN GENERAL, ¶111–170.****(B) DEFENSES AND MITIGATING CIRCUMSTANCES IN GENERAL, ¶171–190.****(C) EXERCISE OF AUTHORITY OR DUTY, ¶191–210.****(D) OFFENSES AGAINST PUBLIC OFFICERS AND EMPLOYEES, ¶211–230.****(E) OFFENSES INVOLVING PARTICULAR RELATIONSHIPS, ¶231–260.****(F) OFFENSES INVOLVING MEDICAL TREATMENT OR HEALTH CARE, ¶261–280.****(G) PARTIES TO OFFENSES, ¶281–290.****III. CRIMINAL PROSECUTIONS, ¶291–610.****(A) IN GENERAL, ¶291–300.****(B) INDICTMENT OR OTHER CHARGING INSTRUMENT, ¶301–330.****(C) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF, ¶331–340.****(D) ADMISSIBILITY OF EVIDENCE, ¶341–360.****(E) WEIGHT AND SUFFICIENCY OF EVIDENCE, ¶361–510.****1. IN GENERAL, ¶361–400.****2. DEFENSES AND MITIGATING CIRCUMSTANCES IN GENERAL, ¶401–420.****3. EXERCISE OF AUTHORITY OR DUTY, ¶421–430.**

**37. ASSAULT AND BATTERY****III. CRIMINAL PROSECUTIONS—Cont'd**

- (E) WEIGHT AND SUFFICIENCY OF EVIDENCE—Cont'd
- 4. OFFENSES AGAINST PUBLIC OFFICERS AND EMPLOYEES, ⚭431–450.
- 5. OFFENSES INVOLVING PARTICULAR RELATIONSHIPS, ⚭451–480.
- 6. OFFENSES INVOLVING MEDICAL TREATMENT OR HEALTH CARE, ⚭481–500.
- 7. PARTIES TO OFFENSES, ⚭501–510.
- (F) QUESTIONS OF LAW OR FACT, ⚭511–550.
- (G) INSTRUCTIONS, ⚭551–590.
- (H) SENTENCE AND PUNISHMENT, ⚭591–610.

**IV. CIVIL LIABILITY, ⚭611–750.**

- (A) IN GENERAL, ⚭611–640.
- (B) DEFENSES AND MITIGATING CIRCUMSTANCES IN GENERAL, ⚭641–660.
- (C) EXERCISE OF AUTHORITY OR DUTY, ⚭661–670.
- (D) LIABILITY FOR SEXUAL CONDUCT, ⚭671–680.
- (E) LIABILITY FOR LAW ENFORCEMENT ACTIVITIES, ⚭681–700.
- (F) LIABILITY FOR PROVIDING MEDICAL TREATMENT OR HEALTH CARE, ⚭701–710.
- (G) PERSONS LIABLE, ⚭711–720.
- (H) ACTIONS, ⚭721–750.

**I. IN GENERAL.**

- 101. In general.
- 102. Statutory and regulatory provisions.
- 103. — In general.
- 104. — Purpose and construction in general.
- 105. — Validity.
  - (1). In general.
  - (2). Assault in general.
  - (3). Battery in general.
  - (4). Degrees and aggravated offenses in general.
  - (5). Great, extreme, or severe injury or harm in general.
  - (6). Causing contact with bodily fluids or waste; exposure to or transmission of disease.
  - (7). Maiming or disfiguring; mayhem.
  - (8). Wounding.

**I. IN GENERAL.(Cont'd)**

- (9). Torture.
- (10). Endangerment.
- (11). Use of weapons or other dangerous instrumentalities; armed violence.
- (12). Number of persons present; gang assault.
- (13). Offenses against disabled, vulnerable, or incapacitated victims.
- (14). Offenses against public officers and employees.
- (15). Offenses involving domestic or other particular relationships.
- (16). Offenses involving medical treatment or health care.
- 106. — Retroactive or prospective operation.
- 107. What law governs.
- 108. Federal preemption.

**II. CRIMINAL OFFENSES.****(A) IN GENERAL.**

- 111. In general.
- 112. Assault in general.
- 113. Battery in general.
- 114. Degrees and aggravated offenses in general.
- 115. — In general.
- 116. — Felonious offenses in general.
- 117. — First-degree offenses.
- 118. — Second-degree offenses.
- 119. — Lesser degrees; simple offenses and misdemeanors.
- 120. — Offenses involving great, extreme, or severe injury or harm.
- 121. Nature and circumstances of acts involved in general.
- 122. — In general.
- 123. — Overt act in general.
- 124. — Physical or bodily contact; touching.
- 125. — Particular acts or conduct.
  - (1). In general.
  - (2). Causing contact with bodily fluids or waste.
  - (3). Biting or spitting.
  - (4). Choking or strangling.
- 126. — Use of words alone; mere threats.



**37. ASSAULT AND BATTERY****II. CRIMINAL OFFENSES.(Cont'd)**

- 127. Maiming or disfiguring; mayhem.
- 128. Wounding.
- 129. Torture.
- 130. Endangerment.
- 131. Use of weapons or other dangerous instrumentalities.
- 132. — In general.
- 133. — Armed violence in general.
- 134. — Deadly weapons or instrumentalities in general.
- 135. — Particular items or objects.
- 136. — Firearms; shooting.
  - (1). In general.
  - (2). Firing from vehicle; drive-by shooting.
  - (3). Pointing, displaying, or brandishing.
- 137. — Knives and other sharp implements; stabbing.
- 138. Number of persons present; gang assault.
- 139. Condition or status of victim.
- 140. — In general.
- 141. — Age of victim.
- 142. — Disability, vulnerability, or incapacitation of victim.
- 143. Injury or harm.
- 144. — In general.
- 145. — Nature and extent in general.
  - (1). In general.
  - (2). Severity.
- 146. — Particular injuries or body parts.
  - (1). In general.
  - (2). Respiration and blood circulation.
- 147. — Fear or apprehension of harm.
  - (1). In general.
  - (2). Reasonableness.
  - (3). Actual fright or apprehension.
- 148. — Mental or emotional harm.
- 149. — Exposure to or transmission of disease.
- 150. Intent or knowledge.
- 151. — In general.
- 152. — Intent to cause injury or harm.
  - (1). In general.
  - (2). Great, extreme, or severe injury or harm.

**II. CRIMINAL OFFENSES.(Cont'd)**

- (3). Permanent injury or harm; intent to maim or disfigure.
- (4). Choking or strangling.
- (5). Torture.
- (6). Exposure to or transmission of disease.
- 153. — Malice or willfulness.
- 154. — Wantonness, recklessness, or negligence.
- 155. — General or specific intent.
- 156. — Transferred intent.
- 157. — Motive.
- 158. Ability to carry out act or execute intent.
- 159. Continuing or repeated conduct.
- 160. Inchoate offenses; attempt.
- 161. — In general.
- 162. — Attempted assault.
- 163. — Attempted battery.
- 164. — Assault as attempted or inchoate battery.

**(B) DEFENSES AND MITIGATING CIRCUMSTANCES IN GENERAL.**

- 171. In general.
- 172. Consent.
- 173. Provocation.
- 174. Extreme emotional disturbance.
- 175. Self-defense.
- 176. — In general.
- 177. — Conduct or circumstances preceding use of force.
- 178. — Aggression or provocation by accused.
- 179. — Danger and apprehension of danger.
- 180. — Withdrawal or retreat.
- 181. — Resisting unlawful citizen's arrest.  
*Resisting unlawful arrest by law enforcement officer, see §221.*
- 182. Defense of others.
- 183. Defense of property.
- 184. Accident or misfortune.

**(C) EXERCISE OF AUTHORITY OR DUTY.**

- 191. In general.
- 192. Exceeding authority or duty in general.
- 193. Public officers and employees in general.
- 194. Law enforcement activities.
- 195. — In general.

**37. ASSAULT AND BATTERY****II. CRIMINAL OFFENSES.(Cont'd)**

- 196. — Searches, seizures, and arrests in general.
- 197. — Use of force in general.
- 198. — Excessive or unreasonable force.
- 199. — Use of weapons or other dangerous instrumentalities.
- 200. — Law enforcement activities of private individuals; citizen's arrest.
- 201. Privilege or immunity.

**(D) OFFENSES AGAINST PUBLIC OFFICERS AND EMPLOYEES.**

- 211. In general.
- 212. Police and law enforcement personnel in general.
- 213. Firefighters and emergency personnel in general.
- 214. Injury or harm.
- 215. Intent or knowledge.
- 216. — In general.
- 217. — As to official identity or status.
- 217.5. Inchoate offenses; attempt.
- 218. Defenses and mitigating circumstances.
- 219. — In general.
- 220. — Self-defense in general.
- 221. — Resisting unlawful arrest.  
*Resisting unlawful citizen's arrest, see ¶181.*
- 222. Offenses against corrections personnel.
- 223. — In general.
- 224. — Intent or knowledge.
- 225. — Defenses and mitigating circumstances.
- 226. Offenses against probation and parole officers.

**(E) OFFENSES INVOLVING PARTICULAR RELATIONSHIPS.**

- 231. In general.
- 232. Domestic relationships.
- 233. — In general.
- 234. — Nature of relationship.
- 235. — Intent or knowledge.
- 236. — Defenses and mitigating circumstances in general.
- 237. — Consent.
- 238. — Provocation and self-defense.
- 239. Parents and children.
- 240. — In general.
- 241. — Persons in loco parentis in general.

**II. CRIMINAL OFFENSES.(Cont'd)**

- 242. — Intent or knowledge.
- 243. — Defenses and mitigating circumstances in general.
- 244. — Lawfulness of act; exercise of authority or duty.
  - (1). In general.
  - (2). Discipline.
- 245. — Offenses by children.
- 246. Teachers and students; education.
- 247. — In general.
- 248. — Intent or knowledge.
- 249. — Defenses and mitigating circumstances in general.
- 250. — Lawfulness of act; exercise of authority or duty.
  - (1). In general.
  - (2). Discipline.
- 251. — Offenses by students.
- 252. Membership in organizations; hazing.

**(F) OFFENSES INVOLVING MEDICAL TREATMENT OR HEALTH CARE.**

- 261. In general.
- 262. Offenses by providers.
- 263. — In general.
- 264. — Intent or knowledge.
- 265. — Defenses and mitigating circumstances in general.
- 266. — Consent.
- 267. Offenses against providers.
- 268. — In general.
- 269. — Emergency medical personnel in general.
- 270. — Intent or knowledge.
- 271. — Defenses and mitigating circumstances.

**(G) PARTIES TO OFFENSES.**

- 281. In general.
- 282. Principals, accessories, and accomplices.
- 283. Aiding and abetting.

**III. CRIMINAL PROSECUTIONS.****(A) IN GENERAL.**

- 291. In general.
- 292. Evidence in general.
- 293. Trial in general.
- 294. Verdict.

**37. ASSAULT AND BATTERY****(B) INDICTMENT OR OTHER CHARGING INSTRUMENT.**

- 301. In general.
- 302. Requisites and sufficiency in general.
- 303. — In general.
- 304. — Assault in general.
- 305. — Battery in general.
- 306. — Degrees and aggravated offenses in general.
- 307. — Great, extreme, or severe injury or harm in general.
- 308. — Causing contact with bodily fluids or waste; exposure to or transmission of disease.
- 309. — Maiming or disfiguring; mayhem.
- 310. — Wounding.
- 311. — Torture.
- 312. — Endangerment.
- 313. — Use of weapons or other dangerous instrumentalities; armed violence.
- 314. — Number of persons present; gang assault.
- 315. — Offenses against disabled, vulnerable, or incapacitated victims.
- 316. — Offenses against public officers and employees.
- 317. — Offenses involving domestic or other particular relationships.
- 318. — Offenses involving medical treatment or health care.
- 319. — Inchoate offenses; attempt.
- 320. Intent or knowledge.
- 321. Variance between allegations and proof.

**(C) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF.**

- 331. In general.
- 332. Use of weapons or other dangerous instrumentalities.
- 333. Injury or harm.
- 334. Intent or knowledge.
- 335. Defenses and mitigating circumstances in general.
- 336. Self-defense.

**(D) ADMISSIBILITY OF EVIDENCE.**

- 341. In general.
- 342. Nature and circumstances of acts involved.
- 343. Injury or harm.
- 344. Intent or knowledge.

**III. CRIMINAL PROSECUTIONS.(Cont'd)**

- 345. — In general.
- 346. — Motive.
- 347. Defenses and mitigating circumstances in general.
- 348. — In general.
- 349. — Self-defense.
- 350. Character and physical condition of persons involved.
- 351. — In general.
- 352. — Defenses and mitigating circumstances.
- 353. Threats, preparations, and previous attempts.
- 354. — In general.
- 355. — Offenses involving domestic or other particular relationships.

**(E) WEIGHT AND SUFFICIENCY OF EVIDENCE.****1. IN GENERAL.**

- 361. In general.
- 362. Assault in general.
- 363. Battery in general.
- 364. Degrees and aggravated offenses in general.
- 365. — In general.
- 366. — Felonious offenses in general.
- 367. — First-degree offenses.
- 368. — Second-degree offenses.
- 369. — Lesser degrees; simple offenses and misdemeanors.
- 370. — Offenses involving great, extreme, or severe injury or harm.
- 371. Physical or bodily contact; touching.
- 372. Causing contact with bodily fluids or waste.
- 373. Use of words alone; mere threats.
- 374. Maiming or disfiguring; mayhem.
- 375. Wounding.
- 376. Torture.
- 377. Endangerment.
- 378. Use of weapons or other dangerous instrumentalities.
- 379. — In general.
- 380. — Armed violence in general.
- 381. — Deadly weapons or instrumentalities in general.
- 382. — Particular items or objects.
- 383. — Firearms; shooting.

**37. ASSAULT AND BATTERY****III. CRIMINAL PROSECUTIONS.(Cont'd)**

- (1). In general.
- (2). Firing from vehicle; drive-by shooting.
- (3). Pointing, displaying, or brandishing.
- 384. — Knives and other sharp implements; stabbing.
- 385. Number of persons present; gang assault.
- 386. Condition or status of victim.
- 387. Injury or harm.
- 388. — In general.
- 389. — Severity.
- 390. — Fear or apprehension of harm.
- 391. — Exposure to or transmission of disease.
- 392. Intent or knowledge.
- 393. — In general.
- 394. — Intent to cause injury or harm.
- 395. — Malice or willfulness.
- 396. — Wantonness, recklessness, or negligence.
- 397. — General or specific intent.
- 398. — Transferred intent.
- 399. Inchoate offenses; attempt.

**2. DEFENSES AND MITIGATING CIRCUMSTANCES IN GENERAL.**

- 401. In general.
- 402. Consent.
- 403. Provocation.
- 404. Extreme emotional disturbance.
- 405. Self-defense.
- 406. — In general.
- 407. — Degree of proof in general.
- 408. — Conduct or circumstances preceding use of force.
- 409. — Aggression or provocation by accused.
- 410. — Danger and apprehension of danger.
- 411. — Withdrawal or retreat.
- 412. — Resisting unlawful citizen's arrest.
- 413. Defense of others.
- 414. Defense of property.
- 415. Accident or misfortune.

**3. EXERCISE OF AUTHORITY OR DUTY.**

- 421. In general.

**III. CRIMINAL PROSECUTIONS.(Cont'd)**

- 422. Public officers and employees in general.
- 423. Law enforcement activities.
- 424. — In general.
- 425. — Law enforcement activities of private individuals; citizen's arrest.

**4. OFFENSES AGAINST PUBLIC OFFICERS AND EMPLOYEES.**

- 431. In general.
- 432. Police and law enforcement personnel in general.
- 433. Firefighters and emergency personnel in general.
- 434. Injury or harm.
- 435. Intent or knowledge.
- 436. — In general.
- 437. — As to official identity or status.
- 438. Defenses and mitigating circumstances.
- 439. — In general.
- 440. — Self-defense in general.
- 441. — Resisting unlawful arrest.
- 442. Offenses against corrections personnel.
- 443. Offenses against probation and parole officers.

**5. OFFENSES INVOLVING PARTICULAR RELATIONSHIPS.**

- 451. In general.
- 452. Domestic relationships.
- 453. — In general.
- 454. — Nature of relationship.
- 455. — Intent or knowledge.
- 456. — Defenses and mitigating circumstances in general.
- 457. — Consent.
- 458. Parents and children.
- 459. — In general.
- 460. — Persons in loco parentis in general.
- 461. — Intent or knowledge.
- 462. — Defenses and mitigating circumstances in general.
- 463. — Lawfulness of act; exercise of authority or duty.
  - (1). In general.
  - (2). Discipline.
- 464. — Offenses by children.
- 465. Teachers and students; education.
- 466. — In general.
- 467. — Intent or knowledge.

**37. ASSAULT AND BATTERY****III. CRIMINAL PROSECUTIONS.(Cont'd)**

- 468. — Defenses and mitigating circumstances in general.
- 469. — Lawfulness of act; exercise of authority or duty.
  - (1). In general.
  - (2). Discipline.
- 470. — Offenses by students.
- 471. Membership in organizations; hazing.

**6. OFFENSES INVOLVING MEDICAL TREATMENT OR HEALTH CARE.**

- 481. In general.
- 482. Offenses by providers.
- 483. — In general.
- 484. — Intent or knowledge.
- 485. — Defenses and mitigating circumstances in general.
- 486. — Consent.
- 487. Offenses against providers.
- 488. — In general.
- 489. — Intent or knowledge.
- 490. — Defenses and mitigating circumstances.

**7. PARTIES TO OFFENSES.**

- 501. In general.
- 502. Principals, accessories, and accomplices.
- 503. Aiding and abetting.

**(F) QUESTIONS OF LAW OR FACT.**

- 511. In general.
- 512. Degrees and aggravated offenses in general.
- 513. — In general.
- 514. — Offenses involving great, extreme, or severe injury or harm.
- 515. Physical or bodily contact; touching.
- 516. Use of weapons or other dangerous instrumentalities.
- 517. Number of persons present; gang assault.
- 518. Condition or status of victim.
- 519. Injury or harm.
- 520. Intent or knowledge.
- 521. Inchoate offenses; attempt.
- 522. Defenses and mitigating circumstances in general.
- 523. — In general.
- 524. — Consent.

**III. CRIMINAL PROSECUTIONS.(Cont'd)**

- 525. — Provocation.
- 526. — Extreme emotional disturbance.
- 527. — Self-defense.
- 528. — Defense of others.
- 529. — Defense of property.
- 530. — Accident or misfortune.
- 531. Exercise of authority or duty.
- 532. Offenses against public officers and employees.
- 533. — In general.
- 534. — Defenses and mitigating circumstances.
- 535. Offenses involving particular relationships.
- 536. — In general.
- 537. — Domestic relationships.
- 538. — Parents and children.
- 539. — Teachers and students; education.
- 540. — Defenses and mitigating circumstances in general.
- 541. — Consent.
- 542. — Discipline of children or students.
- 543. Offenses involving medical treatment or health care.
- 544. — In general.
- 545. — Defenses and mitigating circumstances in general.
- 546. — Consent.
- 547. Parties to offenses.

**(G) INSTRUCTIONS.**

- 551. In general.
- 552. Degrees and aggravated offenses in general.
- 553. — In general.
- 554. — Offenses involving great, extreme, or severe injury or harm.
- 555. Physical or bodily contact; touching.
- 556. Use of weapons or other dangerous instrumentalities.
- 557. Number of persons present; gang assault.
- 558. Condition or status of victim.
- 559. Injury or harm.
- 560. Intent or knowledge.
- 561. Inchoate offenses; attempt.
- 562. Defenses and mitigating circumstances in general.
- 563. — In general.

**37. ASSAULT AND BATTERY****III. CRIMINAL PROSECUTIONS.(Cont'd)**

- 564. — Consent.
- 565. — Provocation.
- 566. — Extreme emotional disturbance.
- 567. — Self-defense.
- 568. — Defense of others.
- 569. — Defense of property.
- 570. — Accident or misfortune.
- 571. Exercise of authority or duty.
- 572. Offenses against public officers and employees.
- 573. — In general.
- 574. — Defenses and mitigating circumstances.
- 575. Offenses involving particular relationships.
- 576. — In general.
- 577. — Domestic relationships.
- 578. — Parents and children.
- 579. — Teachers and students; education.
- 580. — Defenses and mitigating circumstances in general.
- 581. — Consent.
- 582. — Discipline of children or students.
- 583. Offenses involving medical treatment or health care.
- 584. — In general.
- 585. — Defenses and mitigating circumstances in general.
- 586. — Consent.
- 587. Parties to offenses.
- 588. Included offenses.

**(H) SENTENCE AND PUNISHMENT.**

- 591. In general.
- 592. Assault in general.
- 593. Battery in general.
- 594. Degrees and aggravated offenses in general.
- 595. Great, extreme, or severe injury or harm in general.
- 596. Causing contact with bodily fluids or waste; exposure to or transmission of disease.
- 597. Maiming or disfiguring; mayhem.
- 598. Wounding.
- 599. Torture.
- 600. Endangerment.
- 601. Use of weapons or other dangerous instrumentalities; armed violence.

**III. CRIMINAL PROSECUTIONS.(Cont'd)**

- 602. Number of persons present; gang assault.
- 603. Offenses against disabled, vulnerable, or incapacitated victims.
- 604. Offenses against public officers and employees.
- 605. Offenses involving domestic or other particular relationships.
- 606. Offenses involving medical treatment or health care.

**IV. CIVIL LIABILITY.****(A) IN GENERAL.**

- 611. In general.
- 612. Nature and elements of liability in general.
- 613. — In general.
- 614. — Assault in general.
- 615. — Battery in general.
- 616. — Other particular grounds or theories of liability.
- 617. Nature and circumstances of acts involved.
- 618. — In general.
- 619. — Overt act in general.
- 620. — Physical or bodily contact; touching.
- 621. — Particular acts or conduct.
  - (1). In general.
  - (2). Causing contact with bodily fluids or waste.
  - (3). Biting or spitting.
- 622. — Use of words alone; mere threats.
- 623. — Use of weapons or other dangerous instrumentalities.
- 624. — Terrorism.
- 625. Injury or harm.
- 626. — In general.
- 627. — Nature and extent in general.
- 628. — Fear or apprehension of harm.
  - (1). In general.
  - (2). Reasonableness.
  - (3). Actual fright or apprehension.
- 629. — Particular injuries or body parts.
- 630. — Mental or emotional harm.
- 631. — Exposure to or transmission of disease.
- 632. Intent or knowledge.

**37. ASSAULT AND BATTERY****IV. CIVIL LIABILITY.(Cont'd)**

- 633. — In general.
- 634. — Intent to cause injury or harm.
- 635. — Malice or willfulness.
- 636. — Wantonness, recklessness, or negligence.
- 637. — General or specific intent.
- 638. — Transferred intent.
- 639. Ability to carry out act or execute intent.

**(B) DEFENSES AND MITIGATING CIRCUMSTANCES IN GENERAL.**

- 641. In general.
- 642. Plaintiff's conduct or fault in general.
- 643. — In general.
- 644. — Contributory negligence and assumption of risk.
- 645. — Allocation of fault; comparative fault.
- 646. Consent.
- 647. Provocation.
- 648. — In general.
- 649. — As basis for allocation of fault.
- 650. Self-defense.
- 651. — In general.
- 652. — Aggression or provocation by defendant.
- 653. Defense of others.
- 654. Defense of property.
- 655. Accident or misfortune.

**(C) EXERCISE OF AUTHORITY OR DUTY.**

- 661. In general.
- 662. Exceeding authority or duty in general.
- 663. Public officers and employees in general.
- 664. Parents and persons in loco parentis.
- 665. Teachers and education personnel.

**(D) LIABILITY FOR SEXUAL CONDUCT.**

*Law enforcement activities, see ¶690. Medical treatment and health care, see ¶707. Criminal liability, see SEX OFFENSES.*

- 671. In general.
- 672. Defenses and mitigating circumstances in general.
- 673. Consent.
- 674. Exposure to or transmission of disease.

**(E) LIABILITY FOR LAW ENFORCEMENT ACTIVITIES.**

- 681. In general.

**IV. CIVIL LIABILITY.(Cont'd)**

- 682. Defenses and mitigating circumstances in general.
- 683. Lawfulness of act; exercise of authority or duty in general.
- 684. Particular activities.
- 685. — In general.
- 686. — Searches, seizures, and arrests in general.
- 687. — Use of force in general.
- 688. — Excessive or unreasonable force.
- 689. — Use of weapons or other dangerous instrumentalities.
- 690. — Sexual conduct.
- 691. Provocation.
- 692. — In general.
- 693. — As basis for allocation of fault.
- 694. Self-defense.
- 695. — In general.
- 696. — Resisting unlawful arrest.
- 697. Privilege or immunity.
- 698. Law enforcement activities of private individuals; citizen's arrest.

**(F) LIABILITY FOR PROVIDING MEDICAL TREATMENT OR HEALTH CARE.**

- 701. In general.
- 702. Defenses and mitigating circumstances in general.
- 703. Consent.
- 704. — In general.
- 705. — Scope of consent.
- 706. — Withdrawal of consent.
- 707. Sexual conduct.
- 708. Privilege or immunity.

**(G) PERSONS LIABLE.**

- 711. In general.
- 712. Vicarious liability and respondeat superior.
- 713. Joint and several liability.
- 714. Acting in concert.

**(H) ACTIONS.**

- 721. In general.
- 722. Nature, form, and right of action.
- 723. Conditions precedent.
- 724. Time to sue; limitations.
- 725. Persons entitled to sue; parties; standing.

**38. ASSIGNMENTS****IV. CIVIL LIABILITY.(Cont'd)**

- 726. Pleading.
- 727. — In general.
- 728. — Liability for sexual conduct in general.
- 729. — Liability for law enforcement activities.
- 730. — Liability for providing medical treatment or health care.
- 731. — Plea or answer.
- 732. — Variance between pleading and proof.
- 733. Evidence.
- 734. — In general.
- 735. — Presumptions, inferences, and burden of proof.
  - (1). In general.
  - (2). Defenses and mitigating circumstances in general.
  - (3). Liability for sexual conduct in general.
  - (4). Liability for law enforcement activities.
  - (5). Liability for providing medical treatment or health care.
- 736. — Admissibility.
  - (1). In general.
  - (2). Character and physical condition of parties.
  - (3). Defenses and mitigating circumstances.
- 737. — Weight and sufficiency.
  - (1). In general.
  - (2). Defenses and mitigating circumstances in general.
  - (3). Liability for sexual conduct in general.
  - (4). Liability for law enforcement activities.
  - (5). Liability for providing medical treatment or health care.
- 738. Damages.
- 739. — In general.
- 740. — Amount awarded.
- 741. — Aggravation and mitigation of damages.
- 742. — Punitive or exemplary damages.
  - (1). In general.
  - (2). Amount awarded.
- 743. — Nominal damages.

**IV. CIVIL LIABILITY.(Cont'd)**

- 744. — Evidence as to damages.
  - (1). In general.
  - (2). Weight and sufficiency in general.
  - (3). Aggravation and mitigation of damages.
  - (4). Punitive or exemplary damages.
- 745. Trial.
- 746. — In general.
- 747. — Questions of law or fact.
  - (1). In general.
  - (2). Defenses and mitigating circumstances in general.
  - (3). Liability for sexual conduct in general.
  - (4). Liability for law enforcement activities.
  - (5). Liability for providing medical treatment or health care.
  - (6). Damages.
- 748. — Instructions.
  - (1). In general.
  - (2). Defenses and mitigating circumstances in general.
  - (3). Liability for sexual conduct in general.
  - (4). Liability for law enforcement activities.
  - (5). Liability for providing medical treatment or health care.
  - (6). Damages.
- 749. Verdict and judgment.
- 750. Costs and fees.

**38. ASSIGNMENTS****SUBJECTS INCLUDED**

Transfers of title to property or estates or interests therein or of other valuable rights in general

More particularly, transfers of debts or other rights in action

Nature, requisites, validity, incidents, operation and effect of such transfers

Evidence relating thereto



**38. ASSIGNMENTS**

Instruments in writing by which such transfers are made, and delivery, acceptance, recording or registration and construction thereof  
Rights, duties, and liabilities of parties thereto between themselves and as to others

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Bankrupt or insolvent laws, assignments in violation of or pursuant to, see **BANKRUPTCY, CREDITORS' REMEDIES** ¶1183

Creditors, general assignment for benefit of, see **CREDITORS' REMEDIES** ¶1172

Fraudulent transfers affecting creditors or subsequent purchasers, see **FRAUDULENT CONVEYANCES**

Imprisoned debtors, assignments to obtain discharge, see **ARREST, CREDITORS' REMEDIES**

Intervention or substitution of assignees in pending actions, see **PARTIES, FEDERAL CIVIL PROCEDURE**

Particular classes of persons, transfers by or to, see **INFANTS, MENTAL HEALTH** and other specific topics

Particular kinds of property, interests, rights, contracts, written instruments, etc., transfers of, see **COPYRIGHTS AND INTELLECTUAL PROPERTY, PATENTS, TRADEMARKS, FRANCHISES, CORPORATIONS AND BUSINESS ORGANIZATIONS, COMMERCIAL PAPER, INSURANCE**, and other specific topics

Secured transactions governed by the Uniform Commercial Code, see **SECURED TRANSACTIONS**

**I. PROPERTY, ESTATES, AND RIGHTS ASSIGNABLE, ¶1–30.****II. MODE AND SUFFICIENCY OF ASSIGNMENT, ¶31–61.****III. VALIDITY, ¶62–70.****IV. OPERATION AND EFFECT, ¶71–89.****V. RIGHTS AND LIABILITIES, ¶90–115.****VI. ACTIONS, ¶116–139.****I. PROPERTY, ESTATES, AND RIGHTS ASSIGNABLE.**

1. Nature of right to assign.
2. What law governs.
3. Statutory provisions.
4. Existence and possession of subject-matter.

**I. PROPERTY, ESTATES, AND RIGHTS ASSIGNABLE.(Cont'd)**

5. Estates or interests in property in general.
6. Future and contingent estates or interests.
7. — In general.
8. — Expectancies.
9. — Possibilities and contingencies.
10. Money due or to become due.
11. Future profits or earnings.
- 11.1. — In general.
12. — Under existing contract.
13. — Not founded on existing contract.
14. — Fees or commissions of executor, administrator, guardian, receiver or trustee.
15. — Salary or fees of public officer.
16. Executed contracts.
17. Executory contracts.
18. — In general.
19. — Personal nature.
20. Written instruments.
21. Rights of action.
22. — In general.
23. — On contract.
24. — For tort.
  - (1). In general.
  - (2). Injuries to person.
  - (3). Fraud.
25. — On equitable grounds.
26. — Founded on statute.
27. — Incident to transfer of right of property.
28. Verdict or other recovery.
29. Transfer of liability.
30. Partial assignments.

**II. MODE AND SUFFICIENCY OF ASSIGNMENT.**

31. Nature and essentials in general.
32. Parties.
33. Agreements to assign.
34. Oral assignments.
35. Assignments by delivery.
36. — In general.
37. — Written evidence of title or right.
38. — Written evidence or statement of debt or claim.
39. — Necessity and sufficiency of delivery.

**38. ASSIGNMENTS****II. MODE AND SUFFICIENCY OF  
ASSIGNMENT.(Cont'd)**

- 40. Assignments in writing.
- 40.1. — In general.
- 41. — Form and contents.
- 42. — Indorsement of written instrument.
- 43. — Execution.
- 44. — Acknowledgment.
- 45. — Delivery.
- 46. — Filing, recording, and registration.
- 47. Equitable assignments.
- 48. — In general.
- 49. — Bill of exchange, check or order.
- 50. — Order or draft on particular fund.
  - (1). In general.
  - (2). Orders or drafts appropriating entire fund.
- 51. — Power of attorney.
- 52. — Agreement to appropriate or pay.
- 53. Consideration.
- 53.1. — In general.
- 54. — Necessity.
- 55. — Sufficiency.
- 56. Acceptance by assignee.
- 57. Notice to debtor.
- 58. Consent of debtor.
- 59. Revocation.
- 60. Reassignment.

**III. VALIDITY.**

- 62. Capacity and assent of parties in general.
- 63. Mistake.
- 64. Fraud, duress, or undue influence.
- 65. Legality of object.
- 66. Legality of consideration.
- 67. Partial invalidity.
- 68. Estoppel or waiver as to defects or objections.
- 69. Ratification.
- 70. Right to contest validity.

**IV. OPERATION AND EFFECT.**

- 71. Effect of transfer in general.
- 72. General rules of construction.
- 73. Property or interest transferred.
- 74. Title conveyed.
- 75. Rights passing as incidents.
- 76. — In general.
- 77. — Collateral agreements.

**IV. OPERATION AND EFFECT.(Cont'd)**

- 78. — Collateral securities, liens, and preferences.
- 79. — Transfer of debt on assignment of security.
- 80. — Ancillary rights of action.
- 81. Exceptions and reservations.
- 82. Conditions and restrictions.
- 83. Priorities.
- 84. — In general.
- 85. — As between assignees.
- 86. — As between assignees and creditors.
- 87. — Bona fide assignees.
- 88. Assignments as security.
- 89. Assignments for collection.

**V. RIGHTS AND LIABILITIES.**

- 90. Nature and extent of rights of assignee in general.
- 91. Control over property or right assigned.
- 92. Compromise or release of claim assigned.
- 93. Payment of debt assigned.
- 94. Rights of assignee as against debtor.
- 95. Rights of assignee as against assignor.
- 95.1. — In general.
- 96. — Right of recourse.
- 97. — Express or implied warranty by assignor.
- 98. Rights of assignee as against third persons.
- 99. Equities and defenses between original parties.
- 100. — In general.
- 101. — As affected by notice of assignment.
- 102. — Bona fide assignees.
- 103. — Estoppel or waiver.
- 104. Equities in favor of third persons.
- 105. Liabilities of assignee.
- 105.1. — In general.
- 106. — To assignor.
- 107. — To debtor.
- 108. — For incumbrances and charges.
- 109. — On contract assigned.
- 110. Rights of assignor as against debtor.
- 111. Rights of assignor as against third persons.
- 112. Liabilities of assignor to third persons.
- 113. — In general.

**38. ASSIGNMENTS****V. RIGHTS AND LIABILITIES.**(Cont'd)

114. — On contract assigned.  
 115. Rights and liabilities of subsequent or remote assignees.

**VI. ACTIONS.**

116. Between assignor and assignee.  
 117. By assignor.  
 118. By assignee.  
 119. — In general.  
 120. — In name of assignor.  
 121. — In name of assignee.  
 122. — Conditions precedent.  
 123. — Control of proceedings.  
 124. Against assignor.  
 125. Against assignee.  
 126. Defenses.  
 127. Jurisdiction and venue.  
 128. Time to sue, and limitations.  
     *See also LIMITATION OF ACTIONS.*  
 129. Parties.  
 130. Pleading.  
 131. — In general.  
 132. — Issues, proof, and variance.  
 133. Evidence.  
 133.1. — In general.  
 134. — Presumptions and burden of proof.  
 135. — Admissibility in general.  
 136. — Assignment.  
 137. — Weight and sufficiency.  
 138. Trial, judgment, and review.  
 139. Costs.

**40. ASSISTANCE, WRIT OF****SUBJECTS INCLUDED**

- Putting in possession of real or personal property persons adjudged to be entitled thereto or purchasers thereof under orders or decrees in equitable actions  
 Nature and scope of the remedy in general; in what cases, and to and against whom, and as to what property, it is allowed  
 Issuance, requisites and validity of writs of assistance, and execution and effect thereof

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Officers' duties and liabilities in respect of issuance and execution of writs of assistance, see **SHERIFFS AND CONSTABLES** and other specific topics  
 Writs of assistance incident to particular classes of proceedings, or to other remedies, see **MORTGAGES AND DEEDS OF TRUST, RECEIVERS**, and other specific topics  
 Writs of possession, dispossessory warrant and other remedies for enforcing judgments in actions to recover possession of specific real property, see **EJECTMENT, LANDLORD AND TENANT** and other specific topics
1. Nature and scope of remedy.
  2. Grounds for application.
  3. Defenses or grounds for opposition.
  4. Persons entitled to writ.
  5. Persons against whom writ may issue.
  6. Property subject to writ.
  7. Jurisdiction to issue.
  8. Proceedings to procure.
  9. Issuance, form, and requisites.
  10. Vacating.

**41. ASSOCIATIONS****SUBJECTS INCLUDED**

- Unincorporated associations in general; their nature, formation and dissolution  
 Clubs and similar bodies, whether incorporated or unincorporated, formed for social purposes or for any common purpose other than pecuniary profit or benefit, and not of a specifically educational, charitable or religious nature  
 Fraternal organizations, lodges, beneficial associations, and similar bodies, whether incorporated or unincorporated, formed for the purpose of mutual pecuniary aid to members or to persons dependent on members, by means of contributions or assessment

**41. ASSOCIATIONS**

Rights, powers, duties and liabilities of such bodies, their members and officers, as among themselves and as to others, incident to the existence of the association, and legal proceedings for enforcement thereof

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Corporations and business organizations, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

Freedom of association, see **CONSTITUTIONAL LAW XVI**

Joint ventures, see **JOINT VENTURES**

Non-profit corporations, see **CORPORATIONS AND BUSINESS ORGANIZATIONS XIV**

Particular businesses or purposes—

Animal welfare societies, see **ANIMALS** ¶3.5(11)

Banking associations, see **FINANCE, BANKING, AND CREDIT IV**

Bar associations, see **ATTORNEYS AND LEGAL SERVICES** ¶16

Building and loan associations, see **FINANCE, BANKING, AND CREDIT IV**

Business associations, see **CORPORATIONS AND BUSINESS ORGANIZATIONS XV(B)** and other specific topics

Cemetery associations, see **CEMETERIES** ¶5

Charitable societies, see **CHARITIES**

Churches and other bodies formed for religious purposes, see **RELIGIOUS SOCIETIES**

College fraternities and sororities, see **EDUCATION** ¶1197

Credit unions and cooperative banks, see **FINANCE, BANKING, AND CREDIT IV**

Employer organizations, see **LABOR AND EMPLOYMENT** ¶107

Exchanges, see **EXCHANGES**

Farm loan associations, see **FINANCE, BANKING, AND CREDIT** ¶1136

Farming and agricultural societies, exhibitions, fairs, and cooperative associations, see **AGRICULTURE** ¶4–6

Homeowners' associations, condominium associations, cooperative associations, and similar bodies formed in connection with common interest communities, see **COMMON INTEREST COMMUNITIES**

Intercollegiate associations, see **EDUCATION VI(L)**

Interscholastic associations, see **EDUCATION IV**

Irrigation and ditch associations, see **WATER LAW XIII(C)3**

Labor unions, see **LABOR AND EMPLOYMENT XII(B)**

Law firms, see **ATTORNEYS AND LEGAL SERVICES IV**

Legal aid organizations, see **ATTORNEYS AND LEGAL SERVICES XIX**

News associations, see **NEWSPAPERS** ¶7

Political party organizations, see **ELECTION LAW** ¶160

Prisoner organizations, see **PRISONS** ¶128

Professional associations, see **CORPORATIONS AND BUSINESS ORGANIZATIONS XV(B)** and other specific topics

Savings and loan associations, see **FINANCE, BANKING, AND CREDIT IV**

Schools, see **EDUCATION**

Trade associations, see **CORPORATIONS AND BUSINESS ORGANIZATIONS XV(B)** and other specific topics

Unauthorized military organizations, see **MILITIA** ¶22

Partnerships, see **PARTNERSHIP**

Regulation and conduct of the business of insurance by mutual or cooperative associations, see **INSURANCE**

Unincorporated companies having a capital stock divided into transferable shares, see **CORPORATIONS AND BUSINESS ORGANIZATIONS XV**

I. IN GENERAL, ¶101–110.

II. CREATION AND ORGANIZATION, ¶111–140.

III. MEMBERSHIP, ¶141–160.

IV. OPERATION AND MANAGEMENT, ¶161–230.

(A) IN GENERAL, ¶161–200.

(B) RIGHTS AND LIABILITIES AS TO NONMEMBERS, ¶201–210.

(C) LIABILITIES OF MEMBERS FOR ACTS AND DEBTS OF ORGANIZATION, ¶211–220.

(D) OFFICERS, COMMITTEES, AND AGENTS, ¶221–230.

**41. ASSOCIATIONS**

- V. SUPERIOR, SUBORDINATE, AND AFFILIATED BODIES; PARENT AND SUBSIDIARY, ¶231–240.
- VI. ACTIONS AND JUDICIAL PROCEEDINGS, ¶241–330.
  - (A) IN GENERAL, ¶241–270.
  - (B) RIGHT OF ACTION; PERSONS ENTITLED TO SUE; STANDING, ¶271–320.
  - (C) PARTIES, ¶321–330.
- VII. MERGER, CONSOLIDATION, AND REORGANIZATION, ¶331–340.
- VIII. DISSOLUTION, INSOLVENCY, AND RECEIVERSHIP, ¶341–350.
- IX. FOREIGN ORGANIZATIONS, ¶351–360.
- X. CRIMINAL RESPONSIBILITY, ¶361–362.

**I. IN GENERAL.**

- 101. In general.
- 102. Nature, status, and purpose in general.
- 103. — In general.
- 104. — Nonprofit organizations in general.
- 105. — Clubs and social organizations.
- 106. — Fraternal organizations, lodges, and beneficial associations.
- 107. Constitutional provisions, statutes, and regulations in general.
- 108. What law governs.
- 109. Federal preemption.

**II. CREATION AND ORGANIZATION.**

- 111. In general.
- 112. Nonprofit organizations in general.
- 113. Clubs and social organizations in general.
- 114. — In general.
- 115. — Incorporation.
- 116. Fraternal organizations, lodges, and beneficial associations in general.
- 117. — In general.
- 118. — Incorporation.
- 119. Commencement and duration.
- 120. Name and seal.
- 121. — In general.
- 122. — Conflicting names; similarity and confusion.
 

*Trademarks, trade names, and service marks, see TRADEMARKS.*
- 123. — Badges, insignia, and emblems.
- 124. Constitutions, by-laws, and rules.
- 125. — In general.

**II. CREATION AND ORGANIZATION.(Cont'd)**

- 126. — Power to make.
- 127. — Validity in general.
- 128. — Adoption, amendment, and repeal.
- 129. — Construction, operation, and effect.
- 130. Records, reports, and filings.

**III. MEMBERSHIP.**

- 141. In general.
- 142. Nonprofit organizations in general.
- 143. Clubs and social organizations in general.
- 144. — In general.
- 145. — Stock.
- 146. Fraternal organizations, lodges, and beneficial associations in general.
- 147. Admission and exclusion of members.
- 148. Withdrawal of members.
- 149. Expulsion, suspension, or discipline of members.
- 150. — In general.
- 151. — Grounds.
- 152. — Notice and procedure.
- 153. — Waiver of objections.
- 154. — Rights of expelled, suspended, or disciplined members.
- 155. Reinstatement of members.
- 156. Transfer of membership.

**IV. OPERATION AND MANAGEMENT.****(A) IN GENERAL.**

- 161. In general.
- 162. Powers, duties, rights, and liabilities in general.
- 163. Dealings between members and organization.
- 164. — In general.
- 165. — Contracts.
 

*Statutory regulation of membership contracts, see AN-TITRUST AND TRADE REGULATION ¶225.*
- 166. — Torts and wrongful conduct.
- 167. — Fiduciary duties.
- 168. Mutual dealings and liabilities of members.
- 169. — In general.
- 170. — Liability for acts of other members.
- 171. Meetings and elections.
- 172. Dues, fees, and assessments.

**41. ASSOCIATIONS****IV. OPERATION AND MANAGEMENT.**(Cont'd)

- 173. — In general.
- 174. — Clubs and social organizations.
- 175. — Fraternal organizations, lodges, and beneficial associations.
- 176. Property and funds.
- 177. — In general.
- 178. — Rights of organization.
- 179. — Rights of members.
- 180. — Rights of former members.
- 181. Loans.
- 182. Benefits.
- 183. — In general.
- 184. — Right to benefits in general.
- 185. — Application for benefits.
- 186. — Failure to pay dues or assessments.
- 187. — Extent of recovery.
- 188. — Payment and persons entitled thereto.
- 189. — Disposition.

**(B) RIGHTS AND LIABILITIES AS TO NONMEMBERS.**

- 201. In general.
- 202. Contracts.
- 203. Torts and wrongful conduct.

**(C) LIABILITIES OF MEMBERS FOR ACTS AND DEBTS OF ORGANIZATION.**

- 211. In general.
- 212. Contracts.
- 213. Torts and wrongful conduct.
- 214. Joint and several liability.

**(D) OFFICERS, COMMITTEES, AND AGENTS.**

- 221. In general.
- 222. Appointment or selection.
- 223. Removal or resignation.
- 224. Meetings.
- 225. Powers, duties, rights, and liabilities.
- 226. — In general.
- 227. — Contracts.
- 228. — Torts and wrongful conduct.
- 229. — Fiduciary duties.

**V. SUPERIOR, SUBORDINATE, AND AFFILIATED BODIES; PARENT AND SUBSIDIARY.**

- 231. In general.
- 232. Rights and liabilities as to third parties.

**V. SUPERIOR, SUBORDINATE, AND AFFILIATED BODIES; PARENT AND SUBSIDIARY.**(Cont'd)

- 233. — In general.
- 234. — Contracts.
- 235. — Torts and wrongful conduct.

**VI. ACTIONS AND JUDICIAL PROCEEDINGS.****(A) IN GENERAL.**

- 241. In general.
- 242. Judicial role in general.
- 243. — In general.
- 244. — Membership decisions.
- 245. — Benefits.
- 246. Capacity of organization to sue or be sued.
- 247. Jurisdiction.  
*Personal jurisdiction, see COURTS, FEDERAL COURTS.*
- 248. Venue.
- 249. Conditions precedent; exhaustion.
- 250. Time to sue; limitations and laches.
- 251. Process and notice.
- 252. Appearance.
- 253. Pleading.
- 254. Evidence.
- 255. — In general.
- 256. — Presumptions, inferences, and burden of proof.
- 257. — Weight and sufficiency.
- 258. Trial or hearing.
- 259. — In general.
- 260. — Questions of law or fact.
- 261. — Instructions.
- 262. Judgment or decree.
- 263. Costs and fees.

**(B) RIGHT OF ACTION; PERSONS ENTITLED TO SUE; STANDING.**

- 271. In general.
- 272. Suits on organization's own behalf; organizational standing in general.
- 273. Injury or interest in general.
- 274. Causation and redressability in general.
- 275. Suits on behalf of third parties in general.
- 276. Suits on behalf of members; associational or representational standing.
- 277. — In general.
- 278. — Standing of members in general.

**41. ASSOCIATIONS****VI. ACTIONS AND JUDICIAL PROCEEDINGS.**(Cont'd)

- 279. — Injury or interest.
- 280. — Causation and redressability.
- 281. — Germaneness.
- 282. — Nature of relief sought.
- 283. — Participation of members; necessity of individualized proof.
- 284. Particular organizations.
- 285. — In general.
- 286. — Nonprofit organizations in general.
- 287. — Clubs and social organizations.
- 288. — Fraternal organizations, lodges, and beneficial associations.
- 289. Particular claims and contexts.
- 290. — In general.
- 291. — Government action or inaction in general.
- 292. — Civil rights and discrimination in general.
- 293. — Aliens, immigration, and citizenship.
- 294. — Consumers.
- 295. — Criminal law enforcement, prisons, and convicts.
- 296. — Education.
- 297. — Elections and voting rights.
- 298. — Environment and natural resources.
- 299. — Health and medical care.
- 300. — Property and housing; zoning and land use.
- 301. — Taxation.
- 302. — Transportation and highways.
- 303. — Weapons.
- 304. Indicia of membership; organizations without members.
- 305. Suits by members or officers in general.
- 306. Suits on behalf of organization.
- 307. Suits against organization.
- 308. — In general.
- 309. — Suits by members or officers.
- 310. Suits against members or officers.
- 311. Proceedings to support or determine standing; pleading and proof.

**(C) PARTIES.**

- 321. In general.
- 322. Naming organization or individuals as parties.

**VI. ACTIONS AND JUDICIAL PROCEEDINGS.**(Cont'd)

- 323. Real parties in interest.
- 324. Necessary and indispensable parties.
- 325. Intervention.
- 326. Bringing in new parties; joinder; substitution.

**VII. MERGER, CONSOLIDATION, AND REORGANIZATION.**

- 331. In general.
- 332. Incorporation.  
*See also CORPORATIONS AND BUSINESS ORGANIZATION* ¶1131.

**VIII. DISSOLUTION, INSOLVENCY, AND RECEIVERSHIP.**

- 341. In general.
- 342. Grounds in general.
- 343. Insolvency.
- 344. Appointment of receiver or other administrator; grounds.
- 345. Disposition of assets, enforcement of liabilities, and payment of claims.
- 346. Actions and judicial proceedings.
- 347. Revival of dissolved organization.

**IX. FOREIGN ORGANIZATIONS.**

- 351. In general.
- 352. Actions and judicial proceedings.
- 353. — In general.  
*Personal jurisdiction, see COURTS, FEDERAL COURTS.*
- 354. — Process.

**X. CRIMINAL RESPONSIBILITY.**

- 361. In general.
- 362. Sentencing and punishment.

**42. ASSUMPSIT, ACTION OF****SUBJECTS INCLUDED**

- Actions of assumpsit, as distinguished from other forms of action
- Nature and scope of the remedy in general, grounds of such action and defenses there-

**43. ASYLUMS AND ASSISTED LIVING FACILITIES**

to, and by and against whom they may be maintained

Proceedings therein, review of proceedings, and costs in such actions

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Election between remedies, see **ELECTION OF REMEDIES**

Forms of action, distinctions between, see **ACTION**

Implied and constructive contracts or quasi-contracts on which the action may be maintained, see **CONTRACTS, IMPLIED AND CONSTRUCTIVE CONTRACTS, ACCOUNT STATED, CONTRIBUTION, SALES**

1. Nature and scope of remedy.
2. Statutory provisions.
3. Grounds.
4. — In general.
5. — Common counts.
6. — Express contract.
  - (1). In general.
  - (2). Sealed instruments.
7. — Implied promise.
8. — Tort.
9. — Demand.
10. Defenses.
11. Persons entitled to sue.
12. Persons liable.
13. Jurisdiction and venue.
14. Time to sue and limitations.  
*See also LIMITATION OF ACTIONS.*
15. Parties.
16. Process and appearance.
17. Pleading.
18. — In general.
19. — Declaration.
20. — Plea or affidavit of defense.
21. — Replication and subsequent pleadings.
22. — Amendment.
23. — Issues, proof and variance.
24. — Defects, objections, and aider by verdict or judgment.
25. Evidence.
26. Damages.
27. Trial.
28. — In general.
29. — Questions for jury.

30. — Instructions.

31. — Verdict.

32. Judgment.

33. Review.

34. Costs.

**43. ASYLUMS AND ASSISTED LIVING FACILITIES****SUBJECTS INCLUDED**

Asylums, “assisted living” and other public and private residential facilities designed to accommodate and protect persons with physical or mental limitations

Orphanages, homeless shelters, half-way houses and other residential facilities for persons whose age, indigency or other special circumstances make living on their own inappropriate

The establishment, location, licensing and regulation of covered facilities

Officers and employees of covered facilities, including their appointment or hiring, compensation, duties and liabilities, and discharge

Contracts and other agreements between residents and covered facilities

Rates and charges imposed by covered facilities for the care of residents, and the obligation of residents, their relatives or the government to contribute to their support

The rights and obligations of covered facilities as to residents, including living conditions, the type of assistance provided, and the ability of facilities to control the conduct of residents

The liability of owners and operators of covered facilities for tortious injuries, including injuries to residents, injuries sustained by non-residents from the actions of residents, and the loss of residents’ personal property

Criminal offenses and prosecutions peculiar to covered facilities and their residents

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

The residential treatment of alcoholics and drug addicts, see **CHEMICAL DEPENDENTS**



### 43. ASYLUMS AND ASSISTED LIVING FACILITIES

- Discrimination as to admission or accommodation by reason of race, color, etc., see CIVIL RIGHTS
- Liability of a facility owner or operator for emotional distress or mental anguish, see DAMAGES or DEATH
- Damages and other procedural aspects of a wrongful death action against the owner or operator of a covered facility, see DEATH
- Hospitals and other facilities, the primary purpose of which is to provide treatment of physical and mental illness, see the topics HEALTH and MENTAL HEALTH
- Medicaid, Medicare and other government-provided medical assistance, see HEALTH
- Liability of health care providers for medical malpractice, negligence or breach of statutory duty, see HEALTH
- Nursing homes and home health care, see HEALTH
- Building and fire codes, as applied to covered facilities, see HEALTH
- Child day care and foster care, see INFANTS
- Facilities for the rehabilitation of juvenile delinquents, see INFANTS
- Accrual, computation and tolling of statutes of limitations on actions involving covered persons or facilities, see LIMITATION OF ACTIONS
- Involuntary commitment to a hospital or other facility on account of mental illness or developmental disability, see MENTAL HEALTH
- Administrative searches of licensed and regulated facilities, see SEARCHES AND SEIZURES
- The siting or location of a covered facility pursuant to zoning and planning statutes or regulations, see ZONING AND PLANNING
10. In general.
  11. Constitutional and statutory provisions.
  12. Preemption.
  13. Establishment, licensing and location.  
*Restrictions on the location of facilities pursuant to zoning and planning statutes and regulations, see ZONING AND PLANNING.*
  14. — In general.
  15. — Administrative agencies and proceedings.
  16. — Judicial review.
  17. Officers and employees.
  18. Regulation of operation in general.
  19. Residency contracts and agreements in general.
  20. Living conditions and assistance provided; control of residents.  
*Financial assistance, see ¶23. Discharge of resident for bad behavior, see ¶21.*
  21. Admittance, discharge and transfer.  
*Involuntary commitment based upon mental illness or developmental disabilities, see the topic MENTAL HEALTH.*
  22. Residents' personal property in general.  
*Use of resident's property for the cost of room, board and care, see ¶23.*
  23. Rates, charges, support and compensation.
  24. — In general.
  25. — Relatives, liability for support.
  26. Records and duty to report; confidentiality in general.
  27. Discipline and revocation of license, permit or certificate; closure.  
*Criminal offenses and prosecutions, see ¶49 and ¶50.*
  28. — In general.
  29. — Grounds, punishment and civil penalties.
  30. — Administrative agencies and proceedings.
  31. — Judicial review.
  32. Renewal or reinstatement of license, permit or certificate.
  33. Tort liability of owners or operators.  
*See also FALSE IMPRISONMENT, FRAUD, LIBEL AND SLANDER, MALICIOUS PROSECUTION, NUISANCE, TORTS, TRESPASS, and CONVERSION AND CIVIL THEFT.*
  34. — In general.
  35. — Abuse of, or physical injury to, residents.  
*Emotional harm or distress, see DAMAGES or DEATH.*
    - (1). In general.
    - (2). Particular cases.
    - (3). Suicide.  
*See DEATH for damages, standing and right to sue, limitations and other concepts peculiar to that topic.*
  36. — Acts of residents injuring non-residents.
  37. — Defenses.
  38. — Persons liable.
  39. Actions.
  40. — In general.

**46H. ATTORNEYS AND LEGAL SERVICES**

41. — Pleading.
42. — Right of action; standing.
43. — Time to sue and limitations.  
*Computation and accrual, see LIMITATION OF ACTIONS.*
44. — Evidence.
45. — Questions of fact.
46. — Instructions.
47. — Damages.  
*See DEATH for damages due to a fatality. See DAMAGES or DEATH for emotional distress damages.*
48. — Verdict and findings.
49. Offenses.
50. Prosecution and punishment.

**46. ATTORNEY GENERAL****SUBJECTS INCLUDED**

- Chief law officer in the government of the United States and of each state
- Appointment, qualification and tenure of office
- Rights, powers, duties and liabilities of the attorney general and his assistants, deputies, etc., in general

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Particular proceedings by or in the name of the attorney general, see CORPORATIONS AND BUSINESS ORGANIZATIONS, QUO WARRANTO, ABANDONED AND LOST PROPERTY II, and other specific topics
1. Appointment, qualification, and tenure.
  2. Deputies, assistants, and substitutes.
  3. Compensation.
  4. Representation of state in general.
  5. Powers and duties.
  6. — In general.
  7. — Bringing and prosecution of actions.
  8. Liabilities.
  9. Actions and other proceedings.

**46H. ATTORNEYS AND LEGAL SERVICES****SUBJECTS INCLUDED**

- Practice of law in any rank or branch of the profession
- Admission to practice, and privileges, disabilities, and liabilities incident to the office conferred
- Licenses and license fees and privilege and occupation taxes
- Bar associations, law firms, and legal aid organizations
- Relation between attorney and client, and their mutual rights, duties, and liabilities
- Regulation of professional conduct
- Regulation of paralegals and other non-attorneys providing legal services
- Pro se litigants and the right to self-representation

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Admissions and declarations by attorneys, see EVIDENCE
- Attorney-client privilege, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY III
- Champertous contracts and transactions with attorneys, see CHAMPERTY AND MAINTENANCE
- Construction of pro se pleadings, see FEDERAL CIVIL PROCEDURE ¶657.5 and PLEADING ¶34(3.5)
- Particular classes of persons, representation of, see INFANTS, MENTAL HEALTH, and other specific topics
- Particular proceedings, conduct of, see specific topics
- Public officers, attorneys as, see ATTORNEY GENERAL, CLERKS OF COURTS, DISTRICT AND PROSECUTING ATTORNEYS, JUDGES, PUBLIC EMPLOYMENT

- I. IN GENERAL, ¶1–40.
- II. ADMISSION TO PRACTICE; LICENSURE OF ATTORNEYS, ¶41–120.
  - (A) IN GENERAL, ¶41–70.
  - (B) ADMISSION IN DIFFERENT JURISDICTION, ¶71–80.

**46H. ATTORNEYS AND LEGAL SERVICES**

- II. ADMISSION TO PRACTICE; LICENSURE OF ATTORNEYS—Cont'd
  - (C) PRACTITIONERS NOT ADMITTED OR LICENSED: UNAUTHORIZED PRACTICE OF LAW, ¶81–120.
- III. OFFICE OF ATTORNEY, ¶121–140.
  - (A) IN GENERAL, ¶121–130.
  - (B) TERM AND TENURE OF OFFICE, ¶131–140.
- IV. ASSOCIATED ATTORNEYS; LAW FIRMS, ¶141–170.
- V. ATTORNEY-CLIENT RELATIONSHIP, ¶171–210.
  - (A) IN GENERAL, ¶171–180.
  - (B) DURATION AND TERMINATION OF RELATIONSHIP, ¶181–200.
  - (C) REPLACEMENT OF COUNSEL; SUBSTITUTION, ¶201–210.
- VI. APPOINTMENT OR ASSIGNMENT AS COUNSEL BY COURT, ¶211–220.
- VII. COMPENSATION OF ATTORNEY, ¶221–360.
  - (A) IN GENERAL, ¶221–260.
  - (B) CONTINGENCY ARRANGEMENTS; CONTINGENCY FEES, ¶261–280.
  - (C) SERVICES UNDER ASSIGNMENT OR APPOINTMENT BY COURT, ¶281–300.
  - (D) COMPENSATION FROM FUNDS IN COURT; COMMON FUND, ¶301–330.
  - (E) ACTIONS AND PROCEEDINGS, ¶331–360.
- VIII. LIEN OF ATTORNEY, ¶361–410.
- IX. AUTHORITY OF ATTORNEY, ¶411–500.
  - (A) IN GENERAL, ¶411–420.
  - (B) PARTICULAR SUBJECTS OF AUTHORITY, ¶421–460.
  - (C) UNAUTHORIZED, NEGLIGENT, OR WRONGFUL ACTS OF ATTORNEY, ¶461–470.
  - (D) NOTICE TO ATTORNEY; IMPUTING KNOWLEDGE TO CLIENT, ¶471–480.
  - (E) PROOF OF AUTHORITY; PROCEEDINGS, ¶481–500.
- X. DUTIES AND LIABILITIES TO CLIENT, ¶501–620.
  - (A) IN GENERAL, ¶501–530.
  - (B) PARTICULAR ACTS AND OMISSIONS, ¶531–600.
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    - 2. PARTICULAR FIELDS OF PRACTICE, ¶541–570.
- X. DUTIES AND LIABILITIES TO CLIENT—Cont'd
  - (B) PARTICULAR ACTS AND OMISSIONS—Cont'd
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    - 4. CONFLICTS OF INTEREST, ¶581–590.
    - 5. FRAUD, DECEIT, AND MISREPRESENTATION, ¶591–600.
  - (C) DEFENSES, EXCUSES, AND JUSTIFICATIONS, ¶601–610.
  - (D) PERSONS LIABLE, ¶611–620.
- XI. DUTIES AND LIABILITIES TO NON-CLIENTS, ¶621–650.
- XII. ACTIONS AND PROCEEDINGS AGAINST ATTORNEYS, ¶651–710.
  - (A) IN GENERAL, ¶651–680.
  - (B) SUMMARY REMEDIES OF CLIENT, ¶681–690.
  - (C) ACTIONS BY NON-CLIENTS, ¶691–700.
  - (D) PROCEEDINGS FOR ACCOUNTING, ¶701–710.
- XIII. STANDARDS OF PROFESSIONAL CONDUCT; ETHICAL OBLIGATIONS, ¶711–930.
  - (A) IN GENERAL, ¶711–730.
  - (B) PARTICULAR STANDARDS AND OBLIGATIONS, ¶731–900.
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    - 2. FEES, ¶791–800.
    - 3. PROPERTY, ¶801–810.
    - 4. CONFIDENTIALITY, ¶811–820.
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    - 6. ACTING IN DIFFERENT OR MULTIPLE CAPACITIES, ¶871–890.
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  - (C) CRIMINAL CONDUCT, VIOLATIONS PREMISED ON, ¶901–930.
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    - 2. PARTICULAR OFFENSES AND CONVICTIONS, ¶911–930.
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  - (B) DEFENSES, EXCUSES, AND JUSTIFICATIONS, ¶951–960.
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**46H. ATTORNEYS AND LEGAL SERVICES****XIV. ENFORCEMENT OF PROFESSIONAL STANDARDS; DISCIPLINE**  
—Cont'd

- (E) TRIAL OR HEARING, ⚡1021–1030.
- (F) JUDGMENT OR ORDER, ⚡1031–1040.
- (G) DISPOSITION AND PUNISHMENT; SANCTIONS, ⚡1041–1090.
- (H) OPERATION AND EFFECT, ⚡1091–1100.
- (I) EFFECT OF FOREIGN ENFORCEMENT; RECIPROCAL DISCIPLINE, ⚡1101–1120.
- (J) REINSTATEMENT, ⚡1121–1140.
- (K) REVIEW, ⚡1141–1180.
- (L) COSTS AND FEES, ⚡1181–1190.
- XV. DISQUALIFICATION OF ATTORNEYS, ⚡1191–1230.
- XVI. LIABILITY OF ATTORNEYS FOR LITIGATION COSTS AND SANCTIONS, ⚡1231–1260.
- XVII. CRIMINAL LIABILITY OF ATTORNEYS, ⚡1261–1270.
- XVIII. CLIENT SECURITY FUNDS, ⚡1271–1280.
- XIX. LEGAL AID ORGANIZATIONS, ⚡1281–1290.
- XX. PRO SE LITIGANTS; SELF-REPRESENTATION, ⚡1291–1300.

**I. IN GENERAL.**

- 1. In general.
- 2. Regulation and control in general.
- 3. — In general.
- 4. — Power to regulate and control in general.
- 5. — Paralegals and other non-attorneys.
- 6. Practice of law in general.
- 7. — In general.
- 8. — Power to define.
- 9. — Right to practice law.
- 10. Administrative agencies, boards, and commissions.
- 11. — In general.
- 12. — Members, officers, agents, and employees.
- 13. — Powers, duties, and liabilities in general.
- 14. — Privilege or immunity.
- 15. — Proceedings and review in general.
- 16. Bar associations; state bar.
- 17. — In general.
- 18. — Membership.
  - (1). In general.

**I. IN GENERAL.**(Cont'd)

- (2). Membership as mandatory or voluntary; integrated or unified bar.
- (3). Dues and assessments.
- (4). Suspension or termination.
- (5). Withdrawal; inactive membership.
- (6). Reinstatement.
- 19. — Directors, officers, agents, and employees.
- 20. — Committees and panels.
- 21. — Powers, duties, and liabilities in general.
- 22. — Privilege or immunity.
- 23. — Proceedings and review in general.
- 24. Constitutional, statutory, and regulatory provisions.
- 25. — In general.
- 26. — Canons, codes, or rules of conduct in general.
- 27. — Rules of court in general.
- 28. — Validity.
  - (1). In general.
  - (2). Admission to practice; licensure; unauthorized practice of law.
  - (3). Compensation of attorney.
  - (4). Lien of attorney.
  - (5). Duties and liabilities of attorneys; malpractice.
  - (6). Standards of professional conduct; enforcement; discipline.
  - (7). Communications concerning legal services; advertising.
  - (8). Criminal liability of attorneys.
- 29. — Retroactive or prospective operation.
- 30. What law governs.
- 31. — In general.
- 32. — Duties and liabilities of attorney; malpractice.
- 33. — Standards of professional conduct; enforcement; discipline.
- 34. Federal preemption.
- II. ADMISSION TO PRACTICE; LICENSURE OF ATTORNEYS.**
  - (A) IN GENERAL.**
    - 41. In general.
    - 42. Power to admit and license.

**46H. ATTORNEYS AND LEGAL SERVICES****II. ADMISSION TO PRACTICE; LICENSURE OF ATTORNEYS.(Cont'd)**

- 43. — In general.
- 44. — Administrative agencies, boards, and commissions.
- 45. — Bar associations; state bar.
- 46. Capacity and qualifications.
- 47. — In general.
- 48. — Education and training.
- 49. — Character and fitness.
- 50. — Political beliefs or activities.
- 51. Application.
- 52. — In general.
- 53. — Truthfulness and candor.
- 54. — Fees.
- 55. Determination of right to admission; proceedings.
- 56. — In general.
- 57. — Demonstration of competence; examinations.
- 58. — Investigations.
- 59. — Presumptions, inferences, and burden of proof.
- 60. — Review.
- 61. Oath.
- 62. Certificate or license.
- 63. — In general.
- 64. — Limited licenses.
- 65. — Certification as specialist.
- 66. Conditional admission; probationary license.
- 67. License fees; occupational taxes.
- 68. Continuing legal education.
- 69. Waiver of requirements.

**(B) ADMISSION IN DIFFERENT JURISDICTION.**

- 71. In general.
- 72. Pro hac vice admission.
- 73. Comity admission.
- 74. Reciprocal admission.
- 75. Admission in federal court.
- 76. Review.

**(C) PRACTITIONERS NOT ADMITTED OR LICENSED; UNAUTHORIZED PRACTICE OF LAW.**

- 81. In general.
- 82. Corporations and other organizations, practice by in general.
- 83. Prohibited and permitted acts in general.

**II. ADMISSION TO PRACTICE; LICENSURE OF ATTORNEYS.(Cont'd)**

- 84. — In general.
- 85. — Representation of others in general.
- 86. — Representation of corporations and other organizations.
- 87. — Drafting or preparation of documents.
- 88. — Administrative practice.
- 89. — Sharing or dividing fees with non-lawyers.
- 90. Particular areas of practice.
- 91. — In general.
- 92. — Financial services; banks and banking.
- 93. — Insurance.
- 94. — Real estate; mortgages and liens; title insurance.
- 95. — Wills, trusts, and estates; trust companies.
- 96. — Heir hunting.
- 97. — Labor and employment.
- 98. — Workers' compensation.
- 99. — Unemployment compensation.
- 100. — Intellectual property; patents, copyrights, and trademarks.
- 101. — Tax matters.
- 102. — Bankruptcy and debt collection.
- 103. — Immigration.
- 104. — Family law and domestic relations.
- 105. Lawyers not admitted, licensed, or authorized in jurisdiction.
- 106. Students, graduates, and interns.
- 107. Paralegals and clerks.
- 108. Effect of unauthorized practice in general.
- 109. Investigations, proceedings, and prosecutions.  
*Enjoining unauthorized practice of law, see INJUNCTION* ¶1370.
- 110. — In general.
- 111. — Civil proceedings.
- 112. — Criminal prosecutions.
- 113. — Contempt.
- 114. Private actions for unauthorized practice.

**III. OFFICE OF ATTORNEY.****(A) IN GENERAL.**

- 121. In general.

**46H. ATTORNEYS AND LEGAL SERVICES****III. OFFICE OF ATTORNEY.(Cont'd)**

- 122. Privileges, duties, and liabilities of attorneys in general.
- 123. Attorney as officer of court.
- 124. Privilege as party to suit.
- 125. Privilege from arrest or service of process.
- 126. Acting as surety.
- 127. Purchasing demands for suit.
- 128. Agents of attorneys; clerks and other employees.
- 129. Liability for officers' fees.
- 130. Liabilities of third persons to attorneys.  
*Interference with attorney-client relationship, see TORTS III.*

**(B) TERM AND TENURE OF OFFICE.**

- 131. In general.
- 132. Inactive status and retirement in general.
- 133. Age, disability, or incapacity.
- 134. — In general.
- 135. — Proceedings to impose suspension or inactive status.
- 136. — Disposition.
- 137. — Review.
- 138. Return to active status.

**IV. ASSOCIATED ATTORNEYS; LAW FIRMS.**

- 141. In general.
- 142. Form of organization.
- 143. — In general.
- 144. — Partnership in general.
- 145. — Limited partnerships.
- 146. — Limited liability partnerships.
- 147. — Limited liability companies.
- 148. — Corporations.
- 149. — Professional associations.
- 150. Property of firm.
- 151. Rights, duties, and liabilities of members.
- 152. — In general.
- 153. — Profits and losses; compensation.
- 154. Liability of firm in general.
- 155. Agents and employees.
- 156. — In general.
- 157. — Attorneys; associates.
- 158. Alteration in membership or business.
- 159. Dissolution, settlement, and accounting.
- 160. — In general.
- 161. — Client fees.

**V. ATTORNEY-CLIENT RELATIONSHIP.****(A) IN GENERAL.**

- 171. In general.
- 172. Creation and existence of relationship.
- 173. — In general.
- 174. — Contracts and retainers in general.
- 175. — Implied relationship.
- 176. — Estoppel to assert or deny relationship.
- 177. — Evidence.
- 178. — Questions of law or fact.
- 179. Persons entitled to assert or benefit from relationship.
- 180. Disclosure of name, residence, or address of client.

**(B) DURATION AND TERMINATION OF RELATIONSHIP.**

- 181. In general.
- 182. Termination by client; discharge.
- 183. — In general.
- 184. — Corporate or other organizational client; in-house counsel.
- 185. Termination by attorney; withdrawal.  
*Criminal prosecutions, see CRIMINAL LAW XXXI.*  
*Withdrawal of appearance, see APPEARANCE, CRIMINAL LAW.*
- 186. — In general.
- 187. — Consent to withdrawal.
- 188. — Permission of court; proceedings.
- 189. Death.
- 190. Age, disability, or incapacity.
- 191. Retirement.
- 192. Completion of contemplated services; conclusion of controversy.
- 193. Operation and effect of termination.
- 194. — In general.
- 195. — Post-termination duties and liabilities in general.
- 196. — Files and property of client.

**(C) REPLACEMENT OF COUNSEL; SUBSTITUTION.**

- 201. In general.
- 202. Proceedings for replacement or substitution.
- 203. — In general.
- 204. — Effect of failure to comply.
- 205. Operation and effect of replacement or substitution.

**46H. ATTORNEYS AND LEGAL SERVICES****VI. APPOINTMENT OR ASSIGNMENT  
AS COUNSEL BY COURT.**

*Rights of criminal defendants as to appointment of counsel, see CRIMINAL LAW XXXI. Rights of civil litigants as to appointment of counsel, see FEDERAL CIVIL PROCEDURE §1951.29, TRIAL §21, CIVIL RIGHTS §1441, 1557.*

- 211. In general.
- 212. Eligibility of attorneys.
- 213. Acceptance of appointment or assignment.
- 214. Duration and termination of relationship.  
*Criminal prosecutions, see CRIMINAL LAW §1831. Termination of parental rights and dependency proceedings, see INFANTS §2340.*
- 215. Replacement of counsel; substitution.
- 216. Appointment of counsel on appeal.

**VII. COMPENSATION OF ATTORNEY.****(A) IN GENERAL.**

- 221. In general.
- 222. Power to regulate and control.
- 223. Right to compensation in general.
- 224. — In general.
- 225. — Quantum meruit in general.
- 226. — Necessity of attorney-client relationship.
- 227. — Performance of services; benefit to client.
- 228. — Itemization of services; billing.
- 229. Effect of termination of relationship.
- 230. Measure and amount of compensation; value of services.
- 231. — In general.
- 232. — Reasonableness, adequacy, and excessiveness in general.
- 233. — Specific services and particular cases.
- 234. Contracts for compensation.
- 235. — In general.
- 236. — Retainers in general.
- 237. — Making, requisites, and validity.
- 238. — Construction and operation.
- 239. — Performance or breach.
- 240. — Measure and amount of compensation.
- 241. Reimbursement of expenses.
- 242. — In general.
- 243. — Computerized research.
- 244. Deductions and set-offs.
- 245. Collection and payment.

**VII. COMPENSATION OF ATTORNEY.(Cont'd)**

- 246. Compensation from funds or property in attorney's possession.
- 247. Persons entitled.
- 248. — In general.
- 249. — Division and apportionment.
- 250. Persons liable.
- 251. — In general.
- 252. — Third parties; non-clients.
- 253. Attorney's right to statutory fees and taxed costs.
- 254. Duty of inquiry as to source of compensation.
- 255. Return of compensation; refund.
- 256. Forfeiture of compensation; disgorgement.

**(B) CONTINGENCY ARRANGEMENTS;  
CONTINGENCY FEES.**

- 261. In general.
- 262. Power to regulate and control.
- 263. Contracts.
- 264. — In general.
- 265. — Making, requisites, and validity.
- 266. — Construction and operation.
  - (1). In general.
  - (2). Effect as creating interest in subject matter of litigation.
- 267. — Performance or breach.
- 268. Measure and amount of compensation.
- 269. Compensation based on amount saved; reverse contingency fees.
- 270. Effect of termination of relationship.
- 271. Effect of settlement or premature termination of action.
- 272. Persons entitled; division and apportionment.
- 273. Persons liable.
- 274. Return of compensation; refund.
- 275. Forfeiture of compensation; disgorgement.

**(C) SERVICES UNDER ASSIGNMENT  
OR APPOINTMENT BY COURT.**

- 281. In general.
- 282. Measure and amount of compensation in general.
- 283. Specific services and particular cases.
- 284. — In general.
- 285. — Criminal justice.

**46H. ATTORNEYS AND LEGAL SERVICES**

*Prosecutors, see DISTRICT AND PROSECUTING ATTORNEYS.*

- (1). In general.
- (2). Capital cases; death penalty.
- 286. — Juvenile justice.
- 287. — Child protection; termination of parental rights.
- 288. — Mental health; commitment proceedings.
- 289. Reimbursement of expenses.
- 290. — In general.
- 291. — Computerized research.

**(D) COMPENSATION FROM FUNDS IN COURT; COMMON FUND.**

- 301. In general.
- 302. Measure and amount of compensation in general.
- 303. — In general.
- 304. — Reasonableness in general.
- 305. — Lodestar method.
- 306. — Percentage method.
- 307. — Lodestar and percentage methods compared or combined.
- 308. Specific services and particular cases.
- 309. — In general.
- 310. — Torts and products liability.
- 311. — Fraud, consumer protection, and unfair trade practices.
- 312. — Antitrust.
- 313. — Telecommunications.
- 314. — Securities regulation.
- 315. — Labor and employment.
- 316. — Taxation.
- 317. — Constitutional and civil rights; discrimination.
- 318. Reimbursement of expenses.
- 319. — In general.
- 320. — Computerized research.

**(E) ACTIONS AND PROCEEDINGS.**

- 331. In general.
- 332. Nature and form.
- 333. — In general.
- 334. — Summary proceedings.
- 335. — Nonjudicial proceedings.
- 336. Jurisdiction.
- 337. Conditions precedent.
- 338. Defenses.

**VII. COMPENSATION OF ATTORNEY.(Cont'd)**

- 339. Time for proceedings; limitations and laches.
- 340. Parties; standing.
- 341. Pleadings and motions.
- 342. Evidence.
- 343. — In general.
- 344. — Presumptions, inferences, and burden of proof.
- 345. — Admissibility.
- 346. — Degree of proof.
- 347. — Weight and sufficiency.
  - (1). In general.
  - (2). Attorney-client relationship.
  - (3). Measure and amount of compensation; value of services.
  - (4). Contracts for compensation; retainers.
  - (5). Contingency arrangements; contingency fees.
  - (6). Payment.
  - (7). Division and apportionment.
  - (8). Services under assignment or appointment by court.
  - (9). Compensation from funds in court; common fund.
  - (10). Forfeiture of compensation; disgorgement.

- 348. Trial or hearing.
- 349. — In general.
- 350. — Questions of law or fact.
- 351. — Instructions.
- 352. — Verdict, findings, and conclusions.
- 353. Judgment and enforcement thereof.
- 354. Judicial review of nonjudicial proceedings.

*Judicial review of judicial proceedings, see APPEAL AND ERROR, FEDERAL COURTS.*

**VIII. LIEN OF ATTORNEY.**

- 361. In general.
- 362. Nature, incidents, and creation.
- 363. — In general.
- 364. — General, possessory, or retaining lien.
- 365. — Special or charging lien.
- 366. — Effect of contracts.
- 367. Persons entitled.
- 368. — In general.
- 369. — Discharged attorneys.



**46H. ATTORNEYS AND LEGAL SERVICES****VIII. LIEN OF ATTORNEY.(Cont'd)**

- 370. — Withdrawn attorneys.
- 371. — Replacement or substitute attorneys.
- 372. — Disbarred or disciplined attorneys.
- 373. Services or fees covered.
- 374. — In general.
- 375. — Amount of lien.
- 376. Subject-matter to which lien attaches.
- 377. — In general.
- 378. — Fruits of attorney's labor in general.
- 379. — Funds or property in attorney's possession in general.
- 380. — Judgment, settlement, or other recovery.
- 381. — Support awards.
- 382. — Patents and other intellectual property.
- 383. — Files, papers, and securities.
- 384. — Real property.
- 385. Time when lien arises or attaches.
- 386. Filing or record of lien; perfection.
- 387. — In general.
- 388. — Time.
- 389. — Notice.
- 390. Establishment and enforcement of lien.
- 391. — In general.
- 392. — Foreclosure and sale in general.
- 393. — Proceedings in general.
- 394. — Nature and form of proceeding.
- 395. — Role and discretion of court.
- 396. — Jurisdiction.
- 397. — Time for proceedings.
- 398. — Notice and hearing.
- 399. — Evidence.
- 400. — Determination and order.
- 401. — Costs and fees.
- 402. Priorities.
- 403. Assignment of lien or claim.
- 404. Waiver, loss, or discharge.
- 405. Protection against assignment by client.
- 406. Protection against settlement between parties.
- 407. — In general.
- 408. — Remedies of attorney.
  - (1). In general.
  - (2). Vacation of settlement and proceeding with original suit.

**VIII. LIEN OF ATTORNEY.(Cont'd)**

- (3). New action against adverse party.
- (4). Proceedings.

- 409. Protection against set-off between parties.

**IX. AUTHORITY OF ATTORNEY.****(A) IN GENERAL.**

- 411. In general.
- 412. Agency in general.
- 413. Client as bound by acts and omissions of attorney.
- 414. — In general.
- 415. — Errors or mistakes of attorney.
- 416. Actual or apparent authority.
- 417. Express or implied authority.
- 418. Limitations on authority.
- 419. Delegation of attorney's authority.

**(B) PARTICULAR SUBJECTS OF AUTHORITY.**

- 421. In general.
- 422. Rights and interests of client in general.
- 423. Disposition of moneys or other property of client.
- 424. Contracts on behalf of client.
- 425. Giving notice and making demands.
- 426. Submission to alternative dispute resolution.
- 427. Submission of controversy without action.
- 428. Confession of or consent to judgment.
- 429. Commencement and conduct of litigation.
- 430. — In general.
- 431. — Strategy and tactics in general.
- 432. — Bringing or defending and dismissal of action.
- 433. — Control of process and service.
- 434. — Interlocutory and incidental proceedings.
- 435. — Conduct of trial.
- 436. — Control of judgment.
- 437. — Control of execution.
- 438. — Control of judicial sale.
- 439. — Appeal or other proceeding for review.
- 440. Receiving payment or security.
- 441. — In general.

**46H. ATTORNEYS AND LEGAL SERVICES****IX. AUTHORITY OF ATTORNEY.(Cont'd)**

- 442. — Mode or form of payment or security.
- 443. — Satisfaction of judgment or execution.
- 444. Stipulations and admissions.
- 445. Settlements, compromises, and releases.
- 446. — In general.
- 447. — Actual or apparent authority.
- 448. — Express or implied authority.
- 449. — Limitations on authority.
- 450. — Receiving less than amount of judgment.
- 451. Criminal prosecutions.
- 452. — In general.
- 453. — Conduct of trial.
- 454. — Appeal or other proceeding for review.

**(C) UNAUTHORIZED, NEGLIGENT, OR WRONGFUL ACTS OF ATTORNEY.**

- 461. In general.
- 462. Liability of client in general.
- 463. Ratification or repudiation by client.
- 464. Acquiescence of client.
- 465. Estoppel to deny authority.

**(D) NOTICE TO ATTORNEY; IMPUTING KNOWLEDGE TO CLIENT.**

- 471. In general.
- 472. Particular cases.

**(E) PROOF OF AUTHORITY; PROCEEDINGS.**

- 481. In general.
- 482. Necessity.
- 483. Objections to authority; proceedings to deny authority.
- 484. Evidence.
- 485. — In general.
- 486. — Presumptions, inferences, and burden of proof.
- 487. — Weight and sufficiency.
- 488. Warrant or other written authority.
- 489. Hearing and determination.

**X. DUTIES AND LIABILITIES TO CLIENT.****(A) IN GENERAL.**

- 501. In general.
- 502. Malpractice or negligence in general; nature and elements.

**X. DUTIES AND LIABILITIES TO CLIENT.(Cont'd)**

- 503. Existence of duty; necessity of attorney-client relationship.
- 504. Nature and scope of duty.
- 505. — In general.
- 506. — Duty as defined or limited by scope of representation.
- 507. Standard of care; breach of duty.
- 508. — In general.
- 509. — Ordinary or reasonable care.
- 510. — Severity of act or omission; mistakes, errors, and inadvertence.
- 511. — Mistakes or errors in judgment; attorney judgment rule.
- 512. Causation.
- 513. — In general.
- 514. — Proximate cause.
- 515. Legal or practical viability of underlying claim; collectibility.
- 516. Injury or harm.
- 517. Fiduciary duties.
- 518. — In general.
- 519. — Standard of care; breach of fiduciary duty.
- 520. — Causation.
- 521. — Injury or harm.
- 522. Nature of client.
- 523. — In general.
- 524. — Multiple clients; dual representation.
- 525. — Potential or prospective clients.
- 526. — Former clients.
- 527. — Client with diminished capacity.
- 528. — Ability to pay; indigence.
- 529. Relation between rules of professional conduct and duties to client.

**(B) PARTICULAR ACTS AND OMISSIONS.****1. IN GENERAL.**

- 531. In general.
- 532. Research and knowledge of law in general.
- 533. Investigation of facts in general.
- 534. Communications with client.
- 535. Communications from client; instructions.
- 536. Maintaining and returning records and files.

**46H. ATTORNEYS AND LEGAL SERVICES****X. DUTIES AND LIABILITIES  
TO CLIENT.(Cont'd)**

537. Compensation; fees.  
538. Confidentiality.

**2. PARTICULAR FIELDS OF PRACTICE.**

541. In general.  
542. Transactions and negotiations in general.  
543. Drafting and filing documents in general.  
544. Contracts in general.  
545. Real property.  
546. Wills, trusts, and estates.  
547. Financial services.  
548. Mortgages and mortgage lending.  
549. Securities.  
550. Insurance.  
551. Taxation.  
552. Debt collection.  
553. Litigation.  
554. — In general.  
555. — Merits of claim or defense; “case within a case”.  
556. — Appearance.  
557. — Pleadings and filings.  
558. — Limitations and filing deadlines.  
559. — Process and service thereof.  
560. — Pretrial proceedings.  
561. — Hearings; trial.  
562. — Relief obtained; amount of recovery.  
563. — Post-judgment proceedings; enforcement of judgment.  
564. — Appellate practice.  
565. Compromise, settlement, and release.  
566. Alternative dispute resolution.  
567. Administrative practice.  
568. Criminal practice.

**3. PROPERTY OR FUNDS OF CLIENT.**

571. In general.  
572. Client trust accounts.  
573. Proceeds of recovery or settlement.  
574. Commingling.  
575. Misappropriation; theft.  
576. Accounting and reporting.

**4. CONFLICTS OF INTEREST.**

581. In general.

**X. DUTIES AND LIABILITIES  
TO CLIENT.(Cont'd)**

582. Concurrent clients.  
583. Current and former clients.  
584. Attorney’s personal interests; self-dealing.  
585. — In general.  
586. — Transactions with client.  
    (1). In general.  
    (2). Conveyances, mortgages, and assignments.  
587. — Acquiring pecuniary interest adverse to client.  
588. — Sexual relationship with client.  
589. Disclosure, waiver, or consent.

**5. FRAUD, DECEIT, AND MISREPRESENTATION.**

591. In general.  
592. Negligent misrepresentation.

**(C) DEFENSES, EXCUSES, AND JUSTIFICATIONS.**

601. In general.  
602. Privilege or immunity.  
603. — In general.  
604. — Judgmental immunity.  
605. — Government attorneys; public defenders.  
606. Contributory negligence, comparative fault, and assumption of risk.  
607. In pari delicto.  
608. Collectibility of underlying judgment.

**(D) PERSONS LIABLE.**

611. In general.  
612. Partners and associates; law firms.  
613. Local counsel.  
614. Paralegals and other non-attorneys.  
615. Joint and several liability.

**XI. DUTIES AND LIABILITIES  
TO NON-CLIENTS.**

621. In general.  
622. Privity in general.  
623. Third-party beneficiaries.  
624. — In general.  
625. — Wills, trusts, and estates.  
626. Third-party employer of attorney.  
627. — In general.  
628. — Insurers.

**46H. ATTORNEYS AND LEGAL SERVICES****XI. DUTIES AND LIABILITIES TO  
NON-CLIENTS.(Cont'd)**

- 629. Other attorneys, associates, and employees.
- 630. Adverse parties and counsel.
- 631. Investors.
- 632. Proceeds of recovery or settlement.
- 633. Intentional, malicious, or tortious acts.
- 634. — In general.
- 635. — Conversion, misappropriation, and theft.
- 636. — Fraud, deceit, and collusion.
- 637. — Negligent misrepresentation.
- 638. — Conspiracy.
- 639. Defenses, excuses, and justifications.
- 640. — In general.
- 641. — Privilege or immunity.
- 642. Persons liable.

**XII. ACTIONS AND PROCEEDINGS  
AGAINST ATTORNEYS.****(A) IN GENERAL.**

- 651. In general.
- 652. Nature and form.
- 653. Conditions precedent in general.
- 654. Existence of other remedies; exhaustion.
- 655. Certificate or affidavit of merit.
- 656. — In general.
- 657. — Effect of noncompliance; dismissal.
- 658. Time for proceedings; limitations and laches.
- 659. Parties; standing.
- 660. Pleadings.
- 661. Evidence.
- 662. — In general.
- 663. — Presumptions, inferences, and burden of proof.
- 664. — Admissibility.
- 665. — Degree of proof.
- 666. — Weight and sufficiency.
  - (1). In general.
  - (2). Necessity of expert evidence.
- 667. Trial or hearing.
- 668. — In general.
- 669. — Questions of law or fact.
- 670. — Instructions.
- 671. — Verdict, findings, and conclusions.
- 672. Damages.

**XII. ACTIONS AND PROCEEDINGS  
AGAINST ATTORNEYS.(Cont'd)**

- 673. — In general.
- 674. — Measure and amount.
- 675. — Aggravation and mitigation.
- 676. — Punitive or exemplary damages.
- 677. — Evidence as to damages.
- 678. Judgment and enforcement thereof.
- 679. Costs and fees.

**(B) SUMMARY REMEDIES OF CLIENT.**

- 681. In general.
- 682. Proceedings and relief.

**(C) ACTIONS BY NON-CLIENTS.**

- 691. In general.
- 692. Nature and form of remedy.
- 693. Parties; standing.
- 694. Pleadings.
- 695. Evidence.
- 696. Trial and judgment in general.
- 697. Questions of law or fact.
- 698. Instructions.

**(D) PROCEEDINGS FOR ACCOUNTING.**

- 701. In general.
- 702. Actions for money collected.

**XIII. STANDARDS OF PROFESSIONAL  
CONDUCT; ETHICAL  
OBLIGATIONS.****(A) IN GENERAL.**

- 711. In general.
- 712. Duty to obey or observe standards in general.
- 713. Standards as providing minimum level of conduct.
- 714. Persons subject to standards.
- 715. Knowledge, intent, and willfulness.
- 716. — In general.
- 717. — Knowledge of governing standards.
- 718. Effect of ethics opinions.
- 719. Effect of violations.
- 720. — In general.
- 721. — Violations as grounds for discipline.
- 722. Multiple violations; merger.
- 723. Serial or repeated violations; recidivism.

**46H. ATTORNEYS AND LEGAL SERVICES****(B) PARTICULAR STANDARDS AND OBLIGATIONS.****1. IN GENERAL.**

- 731. In general.
- 732. Particular violations and grounds for discipline in general.
- 733. Character and conduct in general.
- 734. — In general.
- 735. — Honesty in general; communications, representations, and disclosures in general.
- 736. — Threats or harassment.
- 737. — Paying taxes.
- 738. — Satisfying personal judgments.
- 739. — Political activities and contributions.
- 740. — Use of drugs or alcohol.
- 741. Conduct as to courts and administration of justice in general.
- 742. — In general.
- 743. — Candor in general; communications, representations, and disclosures in general.
- 744. — Meritorious claims and contentions.
- 745. — Expediting litigation.
- 746. — Impartiality and decorum of tribunal.
- 747. — Obedience to court rules, orders, and rulings.
- 748. — Extrajudicial statements; trial publicity.
- 749. — Conduct of district and prosecuting attorneys.
- 750. — Conduct in nonadjudicative proceedings.
- 751. — Obligations as to public service.
- 752. Conduct as to licensure.
- 753. — In general.
- 754. — Obtaining admission to practice.
- 755. — Maintaining license.
- 756. — Engaging or aiding in unauthorized practice of law.
- 757. Conduct as to disciplinary process.
- 758. — In general.
- 759. — Cooperation and participation.
- 760. — Obedience to disciplinary rulings.
- 761. — Reporting misconduct of others.
- 762. Conduct as to client.
- 763. — In general.

**XIII. STANDARDS OF PROFESSIONAL CONDUCT; ETHICAL OBLIGATIONS.(Cont'd)**

- 764. — Competence and professional judgment in general.
- 765. — Scope of representation; allocation of authority.
- 766. — Diligence and promptness.
- 767. — Communications, representations, and disclosures.
- 768. — Multiple clients; dual representation.
- 769. — Potential or prospective clients.
- 770. — Former clients.
- 771. — Client with diminished capacity.
- 772. — Maintaining and returning records and files.
- 773. Conduct as to other attorneys, associates, and employees.
- 774. — In general.
- 775. — Delegation and supervision.
- 776. Conduct as to adverse parties and counsel.
- 777. — In general.
- 778. — Receipt of or access to privileged information.
  - (1). In general.
  - (2). As grounds for disqualification.
- 779. — Unrepresented parties.
- 780. Conduct as to witnesses.
- 781. Conduct as to jurors.
- 782. Duties as to false evidence in general.
- 783. Making or submitting false documents.
- 784. — In general.
- 785. — Signatures and notarization.
- 786. — Abstraction of records or papers.
- 787. Giving false testimony.
- 788. Sale of practice or firm.

**2. FEES.**

- 791. In general.
- 792. Agreements and retainers in general.
- 793. Amount in general.
- 794. Contingency fees and agreements.
- 795. Communications with client; billing.
- 796. Renegotiation.
- 797. Refunds.
- 798. Fee-sharing.
- 799. Reporting requirements; administrative or judicial approval.

**46H. ATTORNEYS AND LEGAL SERVICES****3. PROPERTY.**

- 801. In general.
- 802. Money; funds.
- 803. — In general.
- 804. — Client trust accounts.
- 805. — Proceeds of recovery or settlement.
- 806. — Commingling.
- 807. — Misappropriation; theft.
- 808. — Accounting and reporting.
- 809. Property and funds of non-clients.

**4. CONFIDENTIALITY.**

- 811. In general.
- 812. Duration of duty.
- 813. Multiple clients; dual representation.
- 814. Exceptions; permitted or required disclosures.
- 815. Waiver; consent to disclosure.

**5. CONFLICTS OF INTEREST.**

- 821. In general.
- 822. Concurrent clients.
- 823. Current and former clients.
- 824. — In general.
- 825. — Potential or prospective clients; consultations.
- 826. Particular cases and contexts.
- 827. — In general.
- 828. — Organization or institution as client.
  - (1). In general.
  - (2). Corporations and business organizations.
  - (3). Partnerships.
  - (4). Non-profits.
- 829. — Government or public entity as client.
- 830. — Compensation of attorney for representing client.
  - (1). In general.
  - (2). Acquiring proprietary interest in client's litigation.
  - (3). Payments from non-clients.
- 831. — Insurance.
- 832. — Real estate; mortgages and liens.
- 833. — Wills, trusts, and estates.
- 834. — Labor and employment.
  - (1). In general.
  - (2). Public employment.

**XIII. STANDARDS OF PROFESSIONAL CONDUCT; ETHICAL OBLIGATIONS.(Cont'd)**

- 835. — Intellectual property; patents, copyrights, and trademarks.
- 836. — Bankruptcy and debt collection.
- 837. — Family law and domestic relations.
- 838. — Grand jury proceedings.
- 839. — Class actions.
- 840. — Settlements.
- 841. Attorney's personal interests; self-dealing.
- 842. — In general.
- 843. — Business transactions with client.
- 844. — Agreements concerning attorney's malpractice liability to client.
- 845. — Acquiring pecuniary interest adverse to client.
- 846. — Soliciting or accepting gift from client.
- 847. — Becoming beneficiary of client's will or trust.
- 848. — Using or benefiting from client information.
- 849. — Providing financial assistance to client.
- 850. — Sexual relationship with client.
- 851. Effect of conflicts.
- 852. — In general.
- 853. — Conflicts as grounds for disqualification.
- 854. Persons affected; imputed disqualification.
- 855. — In general.
- 856. — Co-counsel in general.
- 857. — Partners and associates; law firms.
- 858. — Institutional attorneys; in-house counsel.
- 859. — Government attorneys.
- 860. — Paralegals and other non-attorneys.
- 861. Disclosure, waiver, or consent.
- 862. — In general.
- 863. — Concurrent clients.
- 864. — Current and former clients.
- 865. — Particular cases and contexts.
  - (1). In general.
  - (2). Payments from non-clients.
  - (3). Insurance.
  - (4). Settlements.

**46H. ATTORNEYS AND LEGAL SERVICES****XIII. STANDARDS OF PROFESSIONAL CONDUCT; ETHICAL OBLIGATIONS.(Cont'd)**

866. — Timeliness.  
 867. — Implied waiver or consent.

**6. ACTING IN DIFFERENT OR MULTIPLE CAPACITIES.**

871. In general.  
 872. Particular capacities.  
 873. — In general.  
 874. — Witness.  
     *Competency as witness, see WITNESSES.*  
     (1). In general.  
     (2). Expert witness.  
 875. — Candidate for public office.  
 876. — Judge or other adjudicator.  
 877. — Guardian or conservator.  
 878. — Executor, administrator, or trustee.  
 879. Persons affected; imputed disqualification.  
 880. Disclosure, waiver, or consent.

**7. COMMUNICATIONS CONCERNING LEGAL SERVICES.**

891. In general.  
 892. Use of media; advertising.  
 893. Solicitation of clients.  
 894. Recommendations or referrals.  
 895. — In general.  
 896. — Compensation; referral fees.  
 897. Fields of practice; specialists; certifications.  
 898. Name of practice or firm.  
 899. Letterheads.

**(C) CRIMINAL CONDUCT, VIOLATIONS PREMISED ON.****1. IN GENERAL.**

901. In general.  
 902. Seriousness of offense or conviction.  
 903. Offenses and convictions in other jurisdictions.  
 904. Federal offenses and convictions.

**2. PARTICULAR OFFENSES AND CONVICTIONS.**

911. In general.  
 912. Fraud or theft, offenses involving.  
 913. Securities violations.  
 914. Conspiracy, racketeering, and money laundering.

**XIII. STANDARDS OF PROFESSIONAL CONDUCT; ETHICAL OBLIGATIONS.(Cont'd)**

915. Extortion, threats, stalking, and harassment.  
 916. Use of force or violence, offenses involving.  
 917. Sex offenses; prostitution.  
 918. Obscenity and lewdness.  
 919. Minors and endangered persons, offenses against.  
 920. Alcohol and controlled substances, offenses involving.  
 921. Motor vehicle offenses.  
 922. Immigration offenses.  
 923. Tax and internal revenue offenses.  
 924. Obstructing justice, bribery, and perjury.

**XIV. ENFORCEMENT OF PROFESSIONAL STANDARDS; DISCIPLINE.****(A) IN GENERAL.**

931. In general.  
 932. Power to enforce standards or impose discipline; jurisdiction.  
 933. — In general.  
 934. — Courts and judges in general.  
 935. — Court of last resort; Supreme Court.  
 936. — Administrative agencies, boards, and commissions.  
 937. — Bar associations; state bar.  
 938. — Federal system.  
 939. Power to interpret standards.  
 940. Power to pursue, investigate, or prosecute violations.  
 941. — In general.  
 942. — Persons entitled to exercise power.  
 943. Delegation of powers.  
 944. Persons and matters subject to discipline.  
 945. Immunity of participants.

**(B) DEFENSES, EXCUSES, AND JUSTIFICATIONS.**

951. In general.  
 952. Good faith; lack of intent; mistake.  
 953. Ignorance of law or governing standards.  
 954. Physical or mental disability; incapacity.  
 955. Privilege or immunity.

**(C) PROCEEDINGS IN GENERAL.**

961. In general.

**46H. ATTORNEYS AND LEGAL SERVICES****XIV. ENFORCEMENT OF PROFESSIONAL STANDARDS; DISCIPLINE.**(Cont'd)

- 962. Nature and form in general.
- 963. — In general.
- 964. — Purpose of proceedings in general.
- 965. — Civil or criminal nature.
- 966. — Judicial or administrative nature.
- 967. — Rules governing proceedings.
- 968. — Conversion of proceedings.
- 969. — Confidentiality of proceedings.
- 970. Conditions precedent.
- 971. Time for proceedings; limitations and laches.
- 972. Justiciability; mootness.
- 973. Parties.
- 974. Notice and preliminary proceedings in general.
- 975. — In general.
- 976. — Reference.
- 977. — Grievances and investigations.
- 978. — Demands for information; discovery and disclosure; subpoenas.
- 979. — Process; service.
- 980. Suspension pending disposition.
- 981. — In general.
- 982. — Grounds; factors considered.
- 983. — Notice and hearing.
- 984. — Duration and termination; vacation.
- 985. Continuance or stay.
- 986. Consolidation and severance.
- 987. — In general.
- 988. — As to disposition and punishment.
- 989. Charges and answers thereto.
- 990. — In general.
- 991. — Sufficiency.
  - (1). In general.
  - (2). Particular cases.
- 992. — Time to answer.
- 993. — Effect of failure to answer.
- 994. — Amendment or supplementation.
- 995. — Counterclaims.
- 996. — Variance between allegations and proof.
- 997. — Negotiated discipline.
- 998. Impartiality or bias of tribunal.
- 999. Right to counsel.

**(D) EVIDENCE.**

- 1001. In general.
- 1002. Judicial or administrative notice.
- 1003. Presumptions, inferences, and burden of proof.
- 1004. Admissibility in general.
- 1005. Hearsay.
- 1006. Stipulations.
- 1007. Opinion evidence; experts.
- 1008. Weight and sufficiency of evidence.
- 1009. — In general.
- 1010. — Degree of proof.
- 1011. — Particular cases.

**(E) TRIAL OR HEARING.**

- 1021. In general.
- 1022. Necessity; right to hearing.
- 1023. Notice of hearing.
- 1024. Right to present and confront witnesses.
- 1025. Questions of law or fact.
- 1026. Instructions.
- 1027. Verdict, findings, and conclusions.
- 1028. New trial or rehearing.

**(F) JUDGMENT OR ORDER.**

- 1031. In general.
- 1032. Dismissal.
- 1033. On motion or summary proceeding.
- 1034. Amendment, correction, or modification.
- 1035. Relief from judgment or order.
- 1036. Default and judgment or order thereon.

**(G) DISPOSITION AND PUNISHMENT; SANCTIONS.**

- 1041. In general.
- 1042. Nature and purpose.
- 1043. Sanctions available in general.
- 1044. Power and discretion to determine sanction.
- 1045. Factors considered.
- 1046. — In general.
- 1047. — Standards and guidelines.
- 1048. — Comparable dispositions; proportionality.
- 1049. — Aggravating factors.
- 1050. — Mitigating factors.
- 1051. — Other factors.



**46H. ATTORNEYS AND LEGAL SERVICES****XIV. ENFORCEMENT OF PROFESSIONAL STANDARDS; DISCIPLINE.**(Cont'd)

- 1052. Presumptive, baseline, or preliminary potential sanction.
- 1053. Private reprimand, censure, or admonition.
- 1054. Public reprimand, censure, or admonition.
- 1055. — In general.
- 1056. — Mishandling of trust account or client funds.
- 1057. — Criminal conduct.
- 1058. Caution; warning.
- 1059. Monetary sanction.
- 1060. — In general.
- 1061. — Fine or penalty.
- 1062. — Disgorgement or restitution.
- 1063. Voluntary surrender of license; resignation.
- 1064. Suspension.
- 1065. — In general.
- 1066. — Definite suspension.
  - (1). In general.
  - (2). Mishandling of trust account or client funds.
  - (3). Criminal conduct.
- 1067. — Indefinite suspension.
  - (1). In general.
  - (2). Mishandling of trust account or client funds.
  - (3). Criminal conduct.
- 1068. Disbarment; revocation of license.
- 1069. — In general.
- 1070. — Mishandling of trust account or client funds.
- 1071. — Criminal conduct.
  - (1). In general.
  - (2). Crime of moral turpitude.
- 1072. — Automatic disbarment.
- 1073. — Permanent disbarment.
- 1074. Conditional disposition.
- 1075. — In general.
- 1076. — Probation in general.
- 1077. — Conditions imposed.
  - (1). In general.
  - (2). Violation of conditions.
- 1078. — Revocation.
- 1079. Disposition as to attorney admitted conditionally or for limited purpose.
- 1080. — In general.

**XIV. ENFORCEMENT OF PROFESSIONAL STANDARDS; DISCIPLINE.**(Cont'd)

- 1081. — Attorney admitted pro hac vice.
- 1082. Other particular disposition, punishment, or sanction.

**(H) OPERATION AND EFFECT.**

- 1091. In general.
- 1092. Time of taking effect.
- 1093. Concurrent or consecutive operation.
- 1094. Enforcement of judgment, order, or disposition.
- 1095. — In general.
- 1096. — Attorney's obligations and conduct following disposition.
- 1097. — Contempt.
- 1098. Conclusiveness; preclusive effect.
- 1099. Successive proceedings or punishment for same misconduct.

**(I) EFFECT OF FOREIGN ENFORCEMENT; RECIPROCAL DISCIPLINE.**

- 1101. In general.
- 1102. Presumptions, inferences, and burden of proof.
- 1103. Effect of particular foreign dispositions.
- 1104. — In general.
- 1105. — Private reprimand, censure, or admonition.
- 1106. — Public reprimand, censure, or admonition.
- 1107. — Caution; warning.
- 1108. — Monetary sanction.
- 1109. — Voluntary surrender of license; resignation.
- 1110. — Suspension.
- 1111. — Disbarment; revocation of license.
- 1112. — Probation; conditional disposition; stay.

**(J) REINSTATEMENT.**

- 1121. In general.
- 1122. Power to reinstate; jurisdiction.
- 1123. Grounds and factors considered in general.
- 1124. Particular dispositions, reinstatement following.
- 1125. — In general.

**46H. ATTORNEYS AND LEGAL SERVICES****XIV. ENFORCEMENT OF PROFESSIONAL STANDARDS; DISCIPLINE.**(Cont'd)

- 1126. — Voluntary surrender of license; resignation.
- 1127. — Suspension.
  - (1). In general.
  - (2). Suspension pending disposition.
- 1128. — Disbarment; revocation of license.
- 1129. — Probation; conditional disposition; stay.
- 1130. — Revocation of conditional or limited status.
- 1131. Proceedings in general.
- 1132. Time for reinstatement.
- 1133. Petitions, pleadings, and motions.
- 1134. Evidence.
- 1135. Hearing and determination.
- 1136. Conditional reinstatement.
- 1137. Revocation of reinstatement.
- 1138. Operation and effect of reinstatement.

**(K) REVIEW.**

- 1141. In general.
- 1142. Power to review; jurisdiction.
- 1143. — In general.
- 1144. — Disposition and punishment; sanctions.
- 1145. Nature and form of remedy.
- 1146. Decisions reviewable.
- 1147. — In general.
- 1148. — Finality; interlocutory review.
- 1149. — Prematurity; ripeness.
- 1150. — Mootness.
- 1151. — Exhaustion of administrative remedies.
- 1152. Persons entitled to seek review; parties; standing.
- 1153. Time for review.
- 1154. Petition or other application for review.
- 1155. Briefs.
- 1156. Preservation of error; waiver and estoppel; record.
- 1157. Proceedings on review; hearing.
- 1158. — In general.
- 1159. — Supersedeas or stay.
- 1160. Scope, standard, and extent of review.
- 1161. — In general.
- 1162. — De novo review in general.
- 1163. — Particular subjects of review.

**XIV. ENFORCEMENT OF PROFESSIONAL STANDARDS; DISCIPLINE.**(Cont'd)

- (1). In general.
- (2). Recommendations below in general.
- (3). Questions of law or fact in general.
- (4). Grounds for discipline.
- (5). Evidence, verdict, and findings.
- (6). Disposition and punishment; sanctions.
- (7). Effect of foreign enforcement; reciprocal discipline.
- (8). Reinstatement.
- 1164. Presumptions and burden of showing error.
- 1165. — In general.
- 1166. — Disposition and punishment; sanctions.
- 1167. Harmless and reversible error.
- 1168. Determination and disposition.
- 1169. — In general.
- 1170. — Modification.
- 1171. — Remand and proceedings thereon.
- 1172. Further review.

**(L) COSTS AND FEES.**

- 1181. In general.
- 1182. Attorney fees.

**XV. DISQUALIFICATION OF ATTORNEYS.**

*Criminal prosecutions, see CRIMINAL LAW XXXI.*

- 1191. In general.
- 1192. Power to disqualify; jurisdiction.
- 1193. — In general.
- 1194. — Inherent power or jurisdiction.
- 1195. Discretion of court.
- 1196. Factors and considerations in general.
- 1197. — In general.
- 1198. — Standards of professional conduct in general.
- 1199. — Actual or apparent impropriety.
- 1200. — Disfavored or severe nature of remedy.
- 1201. — Tactical use of remedy; harassment.
- 1202. — Relation of remedy to client's right to counsel of choice.
- 1203. — Disqualification of class counsel.

**46H. ATTORNEYS AND LEGAL SERVICES****XV. DISQUALIFICATION OF ATTORNEYS.(Cont'd)**

- 1204. Motions and proceedings for disqualification in general.
- 1205. Persons entitled to seek disqualification; standing.
- 1206. Time for proceedings; laches.
- 1207. Mootness.
- 1208. Proof of grounds for disqualification; evidence.
- 1209. — In general.
- 1210. — Presumptions, inferences, and burden of proof in general.
- 1211. — Shifting burden.
- 1212. — Resolution of doubt.
- 1213. — Sufficiency of showing in general.
- 1214. — Standard of proof; heavy burden.
- 1215. — Strict scrutiny; clear showing.
- 1216. — Per se standard.
- 1217. Discovery.
- 1218. Hearing.
- 1219. Questions of law or fact.
- 1220. Findings and conclusions; determination.
- 1221. Costs and fees.
- 1222. Operation and effect of disqualification.

**XVI. LIABILITY OF ATTORNEYS FOR LITIGATION COSTS AND SANCTIONS.**

*Federal civil cases, see FEDERAL CIVIL PROCEDURE XX. Bankruptcy cases, see BANKRUPTCY §2187. Contempt sanctions, see CONTEMPT. Discovery sanctions against attorneys in criminal prosecutions, see CRIMINAL LAW.*

- 1231. In general.
- 1232. Power to impose; jurisdiction.
- 1233. — In general.
- 1234. — Inherent power or jurisdiction.
- 1235. Grounds for imposition.
- 1236. — In general.
- 1237. — Multiplication of proceedings in general.
- 1238. — Unwarranted, groundless, or frivolous papers or claims.
- 1239. — Fraud, misrepresentation, or omission of facts.
- 1240. — Dilatory or untimely conduct.
- 1241. — Violation of court orders.
- 1242. — Failure to appear or attend proceedings.

**XVI. LIABILITY OF ATTORNEYS FOR LITIGATION COSTS AND SANCTIONS.(Cont'd)**

- 1243. — Other particular conduct.
- 1244. Persons entitled.
- 1245. Persons liable.
- 1246. Type and amount.
- 1247. — In general.
- 1248. — Monetary sanctions; costs.
- 1249. — Non-monetary sanctions.
- 1250. Proceedings to impose.
- 1251. — In general.
- 1252. — Motions; time for filing.
- 1253. — Notice and hearing.
- 1254. — Sua sponte imposition.
- 1255. — Evidence.
- 1256. — Determination; order.
- 1257. — Enforcement.
- 1258. Costs and sanctions on appeal.

**XVII. CRIMINAL LIABILITY OF ATTORNEYS.**

- 1261. In general.
- 1262. Nature and elements of offenses.
- 1263. Liability of partnership or firm.
- 1264. Prosecutions.
- 1265. Sentence and punishment.

**XVIII. CLIENT SECURITY FUNDS.**

- 1271. In general.
- 1272. Actions and proceedings.

**XIX. LEGAL AID ORGANIZATIONS.**

- 1281. In general.
- 1282. Federal aid; Legal Services Corporation.

*See also UNITED STATES VI.*

**XX. PRO SE LITIGANTS; SELF-REPRESENTATION.**

- 1291. In general.
- 1292. Role of court in general.
- 1293. Compliance with standards and rules.
- 1294. — In general.
- 1295. — Procedural matters in general.
- 1296. — Filings and other submissions.
  - (1). In general.
  - (2). Construction in general.

**48A. AUTOMOBILES****XX. PRO SE LITIGANTS; SELF-REPRESENTATION.**(Cont'd)

*Complaints and other pleadings, see FEDERAL CIVIL PROCEDURE* ¶657.5 and *PLEADING* ¶34(3.5).

- 1297. — Time requirements.
- 1298. — Appeals.
- 1299. — Standards of professional conduct.
- 1300. Scope of self-representation.

**47. AUCTIONS AND AUCTIONEERS****SUBJECTS INCLUDED**

Regulation and conduct of sales by auctions  
Rights, duties and liabilities of auctioneers and of sellers and buyers at auctions in general

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Frauds, statute of, requirements as to sales, see FRAUDS, STATUTE OF  
Conduct and validity of sales held pursuant to court order or under special statutory requirements, see CREDITORS' REMEDIES, EXECUTORS AND ADMINISTRATORS, JUDICIAL SALES, TAXATION, and other specific topics

- 1. Power to regulate.
- 2. Statutory and municipal regulations.
- 3. Persons subject to regulation; public auctioneers.
- 4. Licenses and taxes.
- 5. Bonds.
- 6. Agency of auctioneer.
- 7. Conduct and validity of sale.
- 8. Rights and liabilities of seller and buyer.
- 9. Liabilities of auctioneer and clerk.
- 10. Compensation and lien of auctioneer.
- 11. Actions by or against auctioneers.
- 12. Penalties for violations of regulations.
- 13. Offenses by auctioneers.

**48. AUDITA QUERELA****SUBJECTS INCLUDED**

Relief of judgment debtors against judgments and executions on grounds of defense or discharge subsequently arising, by independent proceedings therefor

Nature and scope of the remedy in general; in what cases and as to what judgments and executions it is allowed

Grounds for, jurisdiction to grant, and proceedings to obtain writs of audita querela

Requisites, issuance and effect of the writ, proceedings thereon, and effect of decisions thereon

Review of the proceedings and costs thereon

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Equitable grounds, relief on, see JUDGMENT

Motions and other proceedings in the same action, relief by, see JUDGMENT, CREDITORS' REMEDIES

Stay of, or injunction against, execution, see CREDITORS' REMEDIES

Supersedeas, see SUPERSEDEAS

- 1. Nature and scope of remedy.
- 2. Judgments subject to review.
- 3. Grounds for review.
- 4. Proceedings to procure review, and effect thereof.
- 5. Writ and service.
- 6. Pleading.
- 7. Evidence.
- 9. Judgment.
- 10. Appeal or error.
- 11. Costs.
- 12. Liabilities on bonds and recognizances.

**48A. AUTOMOBILES****SUBJECTS INCLUDED**

Regulation and licensing of motor vehicles and motor carriers

**48A. AUTOMOBILES**

Licensing and regulation of drivers

Rights in and use of highways and other public places

Injuries to highways, to motor vehicles, and to occupants of private vehicles

Injuries from defects in, or negligent or wrongful use of, motor vehicles, other than as public carriers, or to employees

Injuries from defects in, or obstruction of, highways or other public places

Liabilities for such injuries and actions to enforce such liabilities, including statutory and punitive damages

Accident indemnity funds

Violation of regulations as offenses, and prosecution and punishment thereof

Filling stations, garages, repairmen, and rental agencies

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Compensatory damages for injuries, see DAMAGES

Employers' rights, duties and liabilities as to their employees, see LABOR AND EMPLOYMENT, WORKERS' COMPENSATION

General contractual rights, duties and liabilities, and consideration of motor vehicles as property, see BAILMENT, CARRIERS, CHATTEL MORTGAGES, EXEMPTIONS, INSURANCE, SALES, SECURED TRANSACTIONS, TAXATION and other specific topics

Manufacturers and sellers, liability of, see PRODUCTS LIABILITY

Motor carriers' rights, duties, and liabilities as to passengers and freight, see CARRIERS

Particular offenses not involving motor vehicle regulations, nor direct injuries from negligent or wrongful use of motor vehicles, see ALCOHOLIC BEVERAGES, CUSTOMS DUTIES, LARCENY, RECEIVING STOLEN GOODS, and other specific topics

Particular remedies, see CREDITORS' REMEDIES, REPLEVIN, and other specific topics

Railroads and street railroads, injuries from operation of, see RAILROADS, URBAN RAILROADS

- I. CONTROL, REGULATION, AND USE IN GENERAL, ¶1–20.
- II. LICENSE AND REGISTRATION OF PRIVATE VEHICLES, ¶21–57.
- III. PUBLIC SERVICE VEHICLES, ¶58–128.
  - (A) CONTROL AND REGULATION IN GENERAL, ¶58–64.
  - (B) LICENSE AND REGISTRATION, ¶65–108.
  - (C) REGULATION OF OPERATION AND MANAGEMENT, ¶109–128.
- IV. LICENSE AND REGULATION OF CHAUFFEURS OR OPERATORS, ¶129–145.
- V. INJURIES FROM OPERATION, OR USE OF HIGHWAY, ¶146–251.28.
  - (A) NATURE AND GROUNDS OF LIABILITY, ¶146–227.5.
  - (B) ACTIONS, ¶228–251.
  - (C) ACCIDENT INDEMNITY FUNDS, ¶251.1–251.10.
  - (D) EFFECT OF NO FAULT STATUTES, ¶251.11–251.20.
  - (E) PROVIDERS OF INTOXICATING OR IMPAIRING SUBSTANCES, ¶251.21–251.28.
- VI. INJURIES FROM DEFECTS OR OBSTRUCTIONS IN HIGHWAYS AND OTHER PUBLIC PLACES, ¶252–314.
  - (A) NATURE AND GROUNDS OF LIABILITY, ¶252–290.
  - (B) ACTIONS, ¶291–314.
- VII. OFFENSES, ¶315–361.
  - (A) IN GENERAL, ¶315–348.
  - (B) PROSECUTION, ¶349–358.
  - (C) SENTENCE AND PUNISHMENT, ¶359.1–359.6.
  - (D) REVIEW, ¶360.
  - (E) COSTS, ¶361.
- VIII. GARAGE KEEPERS, REPAIRMEN, AUTO LIVERYMEN, AND FILLING STATIONS, ¶362–410.
- IX. EVIDENCE OF SOBRIETY TESTS, ¶411–426.

**I. CONTROL, REGULATION, AND USE IN GENERAL.**

- 1. What are automobiles or motor vehicles.
- 2. Applicability to automobiles of regulations affecting other vehicles.
- 3. Means of conveyance in general.
- 4. Right to use motor vehicles on highways.
- 5. Power to regulate or prohibit.
  - (1). In general.

**48A. AUTOMOBILES****I. CONTROL, REGULATION, AND  
USE IN GENERAL.**(Cont'd)

- (2). Equipment, lights, and signals.
- (3). Stopping, parking, or standing.
- (4). Speed and control.
- (5). Traffic regulations.
- 6. Constitutional and statutory provisions.
- 7. Local regulations.
- 8. Delegation of municipal powers.
- 9. Concurrent and conflicting regulations.
- 10. Subjects of regulations in general.
- 11. Construction and operation of regulations in general.
- 12. Parking or standing.
- 13. Highways affected by regulations.
- 14. One way streets.
- 15. Injuries to highways.
- 17. Injuries from defects in private premises.
- 19. Sale or transfer.  
*See also SALES.*
- 20. Certificate of title.

**II. LICENSE AND REGISTRATION  
OF PRIVATE VEHICLES.**

- 21. Nature of license.
- 22. Power to license or tax.
- 23. — In general.
- 24. — States.
- 25. — Counties.
- 26. — Municipal corporations.
- 27. — Delegation of power.
- 28. Constitutionality and validity of acts and ordinances.
- 29. Statutory provisions.
- 30. Municipal ordinances.
- 31. Ownership of vehicles.
- 32. — In general.
- 33. — Association or joint owners.
- 34. — Persons doing business in fictitious or trade-name.
- 35. — Dealers.
- 36. — Nonresidents.
- 37. Eligibility for and vehicles subject to license.
- 38. Licensing officers, agents, and contractors.
- 39. Proceedings to procure license or certificate.
- 40. Form and requisites of license or certificate.

**II. LICENSE AND REGISTRATION OF  
PRIVATE VEHICLES.**(Cont'd)

- 41. License plates.
- 42. Conditions imposed.
- 43. Bond or other security.
- 44. License fees and taxes.
- 45. — In general.
- 46. — Amount.
- 47. — Lien.
- 48. — Payment and collection.
- 49. — Disposition of moneys collected.  
*See also 251.1–251.8.*
- 50. — Refunding or recovering.
- 51. — Remedies for wrongful collection.
- 52. Construction and effect of license.
- 53. Death of owner.
- 54. Transfer of rights.
- 55. Revocation, forfeiture, or suspension of license.
- 56. Rights, remedies, and liabilities respecting unlicensed or unregistered vehicles.
- 57. Damages and penalties.

**III. PUBLIC SERVICE VEHICLES.****(A) CONTROL AND REGULATION IN GENERAL.**

- 58. Right to use highways.
- 59. Power to control and regulate.
- 60. Constitutional and statutory provisions.
- 61. Local regulations.
- 62. Concurrent and conflicting regulations.
- 63. Supervision by public officers.
- 64. Judicial supervision.

**(B) LICENSE AND REGISTRATION.**

- 65. Nature of license.
- 66. Power to license or tax.
- 67. — In general.
- 68. — United States.
- 69. — States.
- 70. — Counties.
- 71. — Municipal corporations.
- 72. — Delegation of power.
- 73. Constitutionality and validity of acts and ordinances.
- 74. Statutory provisions.
- 75. Municipal ordinances.
- 76. Who are carriers.
- 77. Necessity of license or certificate of public convenience and necessity.

**48A. AUTOMOBILES****III. PUBLIC SERVICE VEHICLES.(Cont'd)**

- 78. Eligibility for and vehicles subject to license or certificate.
- 79. Character of applicant.
- 80. Licensing officers, agents, and contractors.
- 81. Proceedings to procure license or certificate.
- 82. — In general.
- 83. — Determination as to necessity for right to operate.
- 84. — Review.
- 85. — Collateral attack.
- 86. Form and requisites of license or certificate.
- 87. Conditions imposed.
- 88. Bonds or other security.
- 89. — In general.
- 90. — Necessity.
- 91. — Amount.
- 92. — Nature of security.
- 93. — Form and sufficiency.
- 94. — Liabilities secured.
- 95. — Actions.
- 96. License fees and taxes.
- 97. — In general.
- 98. — Amount.
- 99. — Lien.
- 100. — Payment or collection.
- 101. — Disposition of moneys collected.
- 102. — Refunding or recovering.
- 103. — Remedies for wrongful assessment or collection.
- 104. Construction and effect of license.
- 105. Transfer of rights.
- 106. Revocation, forfeiture, or suspension of license.
- 107. Failure to comply with laws requiring license or registration.
  - (.5). In general.
  - (1). Effect.
  - (2). Proceedings to enforce or to prevent enforcement of regulations.
- 108. Damages and penalties.

**(C) REGULATION OF OPERATION AND MANAGEMENT.**

- 109. Authority, construction, and operation in general.

**III. PUBLIC SERVICE VEHICLES.(Cont'd)**

- 110. Companies, persons, or vehicles affected by regulations.
- 111. Conduct of business in general.
- 112. Facilities for shipment of goods.
- 113. Accommodations for passengers.
- 114. Bus and truck service.
- 115. Equipment.
- 116. Employees and contractors.
- 117. Lights, signals, and lookouts.
- 118. Rate of speed.
- 119. Stopping, parking, or standing.
- 120. Annoyance to public.
- 121. Fares.
- 122. Reports and statements.
- 123. Franchises and powers.
- 124. Exclusive or conflicting franchises.
- 125. Interference with railroad or street railroad franchises.
- 126. Interstate transportation.
- 127. Proceedings to enforce or to prevent enforcement of regulations.
- 128. Damages and penalties for violation of regulations.

**IV. LICENSE AND REGULATION OF CHAUFFEURS OR OPERATORS.**

- 129. Who are chauffeurs or operators.
  - 130. Control and regulation in general.
  - 131. Operators of public service vehicles.
  - 132. Constitutional and statutory provisions.
  - 135. License and registration.
  - 136. — In general.
  - 136.5. — Constitutional and statutory provisions.
  - 137. — Purpose and necessity.
  - 138. — Eligibility for license.
  - 139. — Proceeding to procure.
  - 141. — License fees.
  - 142. — Construction and effect.
  - 143. — Transfer of rights.
  - 144. Suspension or revocation of license.
  - 144.1. — In general; grounds.
    - (1). In general.
- Excludes evidence of sobriety tests administered to motorists; see AUTOMOBILES ¶411-426.*
- (1.5). Constitutional and statutory provisions.
  - (1.10). Intoxication; implied consent.

**48A. AUTOMOBILES**

*Excludes administration of sobriety tests and evidence of such tests, see 411–426, below.*

- (1.11). — In general.
- (1.20). — Refusal to take test.
- (2). Gross or culpable negligence; recklessness, racing or speeding.
- (3). Repeated or out-of-state misconduct; point system.
- (4). Financial responsibility requirements.
- 144.2. — Procedure.
  - (.5). In general.
  - (1). Administrative procedure in general.
  - (2). Judicial remedies and review in general.
    - (2.1). — In general.
  - (3). — Scope of review; discretion and fact questions.
  - (4). — Trial de novo and determination.
  - (5). Procedure in or arising out of criminal prosecutions.
    - (5.1). — In general.
  - (6). — Warning as to possible consequences of conviction.
  - (7). Procedure under financial responsibility requirements.
  - (9). Evidence and witnesses.
    - (9.5). — In general.
    - (9.6). — Presumptions and burden of proof.
  - (9.7). — Admissibility.
  - (10). Weight and sufficiency of evidence.
    - (10.1). — In general.
    - (10.2). — Intoxication and implied consent in general.
    - (10.3). — Refusal of test.
  - (11). — Gross or culpable negligence, recklessness, racing or speeding.
  - (12). — Repeated or out-of-state misconduct; point system.
  - (13). — Financial responsibility.
- 144.5. — Nature and extent of discipline in general; hardship and mitigating circumstances.
- 144.7. — Reinstatement or new license, in general.

**IV. LICENSE AND REGULATION OF CHAUFFEURS OR OPERATORS.(Cont'd)**

- 144.8. — Ignition interlock and similar mechanisms.
- 145. Rights and liabilities of unlicensed or unregistered chauffeurs or operators.

**V. INJURIES FROM OPERATION, OR USE OF HIGHWAY.****(A) NATURE AND GROUNDS OF LIABILITY.**

- 146. Care required and liability in general.
- 147. Requirements of statutes and ordinances in general.
- 148. Equipment.
- 149. Lights on vehicles.
- 150. Lookout.
- 151. Signals and warnings.
- 152. Customary methods and acts.
- 153. Law of road.
- 154. Right of way.
- 155. Injuries to persons or property not on highway.
- 156. Defects in vehicles.
- 157. Incompetency or inexperience of operator.
- 158. Willful, wanton, or reckless acts or conduct.
- 159. Acts in emergencies.
- 160. Persons on foot in general.
  - (1). In general.
  - (2). Defects or obstructions in street or way.
  - (3). Lights, signals, and lookouts.
  - (4). Crossing street or way.
  - (5). Walking along street or way.
  - (6). Persons on sidewalk.
- 161. Persons under disability in general.
- 162. Children.
  - (1). In general.
  - (2). Lights, signals, and lookouts.
  - (3). Duty to stop.
  - (4). Backing vehicle.
  - (5). Crossing street or way.
  - (6). Walking along street or way.
  - (7). Bicycle riders.
  - (8). Playing or coasting in street or way.
- 163. Persons working on or in highway.
  - (1). In general.



**48A. AUTOMOBILES****V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (2). Lights, signals, and lookouts.
- (3). Railway employees.
- (4). Policemen or other public employees.
- (5). Repairing vehicles or appliances.
- 164. Persons moving to or from street cars.
- 165. Persons entering or leaving vehicles other than street cars.
- 166. Persons emerging from behind obstructions.
- 167. Entering or leaving private premises or alleys.
  - (1). In general.
  - (2). Lights, signals, and lookouts.
  - (3). Right of way.
  - (4). Care required.
- 168. Excessive speed, control, and racing.
  - (.5). In general.
    - (1). Care required and liability in general.
    - (2). Requirements of statutes and ordinances in general.
    - (3). Nature and condition of highway.
    - (4). Meeting other vehicles or persons.
    - (5). Passing other vehicles or persons.
    - (6). Intersections and crossings.
    - (7). Corners and curves.
    - (8). Darkness or fog.
    - (9). Obstruction of view.
    - (10). Racing.
    - (10.1). — In general.
    - (11). — Injuries to spectators.
    - (12). Persons entitled to benefit of regulations.
- 169. Stopping, backing, or turning in general.
- 170. Meeting.
  - (1). In general.
  - (2). Requirements of statutes and ordinances.
  - (3). Customary methods and acts.
  - (4). Lights, signals, and lookouts.
  - (5). Duty to stop.
  - (6). Nature of vehicles.
  - (7). Character and condition of road.
  - (8). Intersections and crossings.
  - (9). Curves and corners.
  - (10). Bicycle riders.

**V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (11). Persons on horseback.
- (12). Care required as to persons violating law of the road.
- (13). Time and place for turning out.
- (14). Extent of turning from traveled way.
- (15). Return to traveled way.
- (16). Meeting outside of traveled way.
- (17). Streets or boulevards divided by parkways, safety zones, etc.
- 171. Crossing.
  - (1). In general.
  - (2). Requirements of statutes and ordinances.
  - (3). Customary methods and acts.
  - (4). Right of way.
  - (4.1). — In general.
  - (5). — Nature of way, crossing, or intersection.
  - (6). — Change of course.
  - (7). — Horse-drawn vehicles.
  - (8). Care required in general.
  - (9). Lights, signals, and lookouts.
  - (10). Obstruction of view.
  - (11). Duty to stop.
  - (12). Manner of turning.
  - (13). Reliance on care of others.
- 172. Following, overtaking, and passing.
  - (1). In general.
  - (2). Requirements of statutes and ordinances.
  - (3). Right to pass.
  - (4). Notice of intention to pass.
  - (5). Duties of forward vehicle.
  - (5.1). — In general.
  - (6). — Stopping, backing, or turning.
  - (7). Care required of following vehicle.
  - (8). Care required of passing vehicle.
  - (9). Collision with approaching vehicle.
  - (10). Duties after passing.
  - (11). Approaching intersections.
  - (12). Passing vehicles turning into private ways.
  - (13). Passing bicycle riders.
  - (14). Passing street cars.

**48A. AUTOMOBILES****V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (15). Passing at intersections or crossings.
- 173. Vehicles at rest or unattended.
  - (1). In general.
  - (2). Requirements of statutes and ordinances.
  - (3). Right to stop or park vehicle in street or way in general.
  - (4). Place of stopping or parking.
  - (5). Lights, signals, and warnings.
  - (6). Passing vehicle parked or standing.
  - (7). Vehicles stopped for repairs.
  - (8). Precautions against starting of vehicle.
- 174. Towing vehicles and vehicles in tow.
  - (1). In general.
  - (2). Requirement of statutes and ordinances.
  - (3). Right to tow.
  - (4). Lights, signals, and lookouts.
- 175. Vehicles used in saving life or property, or enforcing law.
  - (1). In general.
  - (2). Requirements of statutes and ordinances.
  - (3). Right of way.
  - (4). Speed and control.
  - (5). Lights, signals, and lookouts.
- 176. Injuries to animals.
  - (1). In general.
  - (2). Requirements of statutes and ordinances.
  - (3). Animals running at large.
  - (4). Dogs.
  - (5). Animals driven on highway.
- 177. Frightening animals.
  - (1). In general.
  - (2). Appearance of vehicle.
  - (3). Animals not under control.
  - (4). Manner of operating vehicle.
  - (5). Starting vehicle or motor.
  - (6). Speed.
  - (7). Lookouts, signals, and warnings.
  - (8). Duty to stop vehicle or motor.
  - (9). Duty to render assistance.
- 179. Injuries to railroad or street cars or occupants thereof.

**V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- 180. Articles projecting, falling, or thrown from vehicle.
- 181. Liability of private owner or operator to occupant.
  - (.5). In general.
  - (1). Care required and liability in general.
  - (2). Who are passengers, guests, or licensees.
  - (3). Carriage for hire.
  - (4). Trespassers.
  - (5). Defects in vehicle.
  - (6). Defects in roads.
  - (7). Speed and control.
- 182. Rights of person injured.
- 183. Persons liable.
- 184. — In general.
- 185. — Statutory and local regulations.
- 186. — Owners in general.
- 187. — Government; immunity and waiver thereof.
  - (1). In general.
  - (2). Municipal corporations; districts.
  - (3). Counties.
  - (4). States.
  - (5). United States.
  - (6). Personal liability of employees; official immunity.
- 188. — Infants.
- 189. — Persons with psychiatric disabilities.
- 190. — Husband and wife.
- 191. — Parent and child.
- 192. — Owner's liability for acts of third person in general.
  - (1). In general.
  - (2). Defects in vehicles.
  - (3). Lights and equipment.
  - (4). Co-owners.
  - (5). Community liability for acts of husband or wife.
  - (6). Borrower or hirer.
  - (7). Prospective purchasers or sales agents.
  - (8). Buyer under conditional sale.
  - (9). Employees of others.
  - (10). Persons employed by or assisting operator.

**48A. AUTOMOBILES****V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (11). Permitting operation by incompetent person.
- (12). Presence of owner in vehicle.
- 193. — Owner's liability for acts of employee or agent.
  - (1). In general.
  - (2). Statutory or local regulations.
  - (3). Relation of parties.
  - (3.1). — In general.
  - (4). — Persons employed by or assisting employees.
  - (5). — Persons employed by or under the control of third parties.
  - (6). — Termination of relation.
  - (7). Nature of agency.
  - (8). Scope of employment.
  - (13). Incompetency of employee.
  - (14). Deviation from instructions.
  - (15). Willful and malicious acts of employee.
  - (16). Criminal acts of employee.
  - (17). Ratification or repudiation of acts of employee.
- 194. — Acts of independent contractors.
  - (1). In general.
  - (2). Existence of relationship in general.
  - (3). Possession of vehicle for repairs.
  - (4). Salesmen.
- 195. — Owner's liability for acts of member of family.
  - (1). In general.
  - (2). Liability as principal or employer.
  - (3). Incompetency or inexperience of operator.
  - (4). Deviation from directions.
  - (5). Vehicle kept for use of family.
- 196. — Operators in general.
- 197. — Persons other than owners or operators in general.
  - (1). In general.
  - (2). Employment-related issues.  
*Employer-owned vehicles, see ¶193.*
  - (3). Hirer or borrower.
  - (4). Husband or wife.
  - (5). Parent or child.
  - (6). Seller furnishing operator for purchaser.

**V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- 198. — Occupants of vehicles driven by another.
  - (1). In general.
  - (2). Charge of vehicle or assisting in operation.
  - (3). Occupant as employer or principal of operator.
  - (4). Joint enterprise.
- 199. — Towing vehicles and vehicles in tow.
- 200. — Joint and several liability.
- 201. Proximate cause of injury.
  - (.5). In general.
    - (1). Efficient cause of injury in general.
      - (1.1). — In general.
      - (2). — Speed and lack of control.
      - (3). — Defective equipment.
      - (4). — Frightening animals.
      - (5). — Vehicles at rest or unattended.
      - (6). Foreseeability; natural and probable consequences.
      - (7). Remote consequences.
      - (8). Concurrent causes.
      - (9). Intervening efficient cause.
      - (10). Inevitable accident.
- 202. Contributory negligence.
  - 202.1. — In general.
- 203. — Right to use street or highway in general.
- 204. — Care required in general.
- 205. — Knowledge of danger.
- 206. — Reliance on care of person causing injury.
- 207. — Vehicles meeting.
- 208. — Vehicles crossing.
- 209. — Following, overtaking, or passing.
- 210. — Vehicles used in saving life or property or enforcing law.
- 211. — Vehicles stopped or standing.
- 212. — Bicycle riders.
- 213. — Motorcycle riders.
- 214. — Owners, riders, or drivers of animals.
- 215. — Occupants or operators of railroad or street cars.
- 216. — Persons on foot in general.

## 48A. AUTOMOBILES

V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)

217. — Persons crossing highway.  
     (1). In general.  
     (2). At intersections in general.  
     (3). Between intersections in general.  
     (4). Violation of traffic signals.  
     (5). Duty to stop, look, and listen.  
     (6). Crossing in front of approaching vehicle.  
     (7). Crossing diagonally.  
     (8). Private driveways.  
     (9). Obstruction of view.
218. — Persons walking along highway.
219. — Persons working on or in highway.
220. — Persons moving to or from street cars.  
     (1). In general.  
     (2). Duty to look.  
     (3). Reliance on care of person causing injury.  
     (4). Waiting for street car.  
     (5). Boarding street cars.  
     (6). Alighting from street car.  
     (7). Crossing street after alighting.
221. — Persons standing or sitting in highway.
222. — Persons under disability in general.
223. — Children.  
     (1). In general.  
     (2). Age and capacity of child.  
     (3). Care required in general.  
     (4). Duty to stop, look, and listen.  
     (5). Playing in highway.  
     (6). Boarding or alighting from moving vehicle.  
     (7). Bicycle riders.  
     (8). Coasting.
224. — Passenger, guest, or occupant.  
     (1). In general.  
     (2). Overloading or crowding.  
     (3). Reliance on care of operator.  
     (4). Duty to observe danger.  
     (5). Duty to protest or prevent negligent or unlawful act.  
     (6). Duty to leave vehicle.  
     (7). Position in vehicle.  
     (8). Riding with reckless, inexperienced, or intoxicated operator.

V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)

225. — Acts in emergencies.
226. — Effect of contributory negligence.  
     (1). In general.  
     (2). Proximate cause of injury.  
     (3). Comparative negligence and apportionment of fault.
227. — Injury avoidable notwithstanding contributory negligence; last clear chance.
- 227.5. — Imputed contributory negligence.

## (B) ACTIONS.

228. Nature and form of remedy.
229. Grounds and conditions precedent in general.  
     229.5. What law governs.
230. Notice of claim for injury.
231. Defenses.
232. Jurisdiction and venue.  
     *Personal jurisdiction over nonresidents, or "long-arm" jurisdiction, see COURTS §13.1, FEDERAL COURTS X.*
233. Time to sue and limitations.  
     *See also LIMITATION OF ACTIONS.*
234. Parties.
235. Process.
236. Pleading.
237. — In general.
238. — Declaration, complaint, or petition.  
     (1). In general.  
     (2). Duty and liability of defendant.  
     (3). Negligence in general.  
     (4). Violation of statute or ordinance.  
     (5). Speed and control.  
     (6). Injuring or frightening animals.  
     (7). Wanton or willful acts or gross negligence.  
     (8). Proximate cause of injury.  
     (9). Negating contributory negligence.  
     (10). Injury avoidable notwithstanding contributory negligence.
239. — Plea or answer.  
     (1). In general.  
     (2). Contributory and comparative fault; apportionment.
240. — Issues, proof, and variance.  
     (1). In general.

**48A. AUTOMOBILES****V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (2). Evidence admissible under pleading.
- (3). Variance between pleading and proof.
- 241. Evidence.
  - 241.1. — In general.
- 242. — Presumptions and burden of proof.
  - (1). In general.
  - (2). Happening of accident or injury, in general.
  - (3). Violation of statutes or regulations, in general.
  - (4). Speed and control, in general.
    - (4.1). Rear-end collision.
    - (4.2). Vehicles meeting; wrong lane or side.
    - (4.3). Vehicles crossing; left turns.
  - (5). Ownership of vehicle.
  - (6). Status, identity, competency, or scope of employment of operator.
  - (7). Proximate cause of injury.
  - (8). Contributory and comparative negligence.
- 243. — Admissibility.
  - (1). In general.
  - (2). Identity and ownership of vehicle.
  - (3). Negligence in general.
  - (4). Customary methods and acts.
  - (5). Similar facts and transactions.
  - (6). Knowledge of defects in vehicles.
  - (7). Speed and control.
  - (8). Equipment.
  - (9). Lights.
  - (10). Signals and lookouts.
  - (11). License and registration.
  - (12). Status, identity, or scope of employment of operator.
  - (13). Injuring or frightening animals.
  - (14). Conditions after accident.
  - (16). Proximate cause of injury.
  - (17). Contributory and comparative negligence; apportionment of fault.
- 244. — Weight and sufficiency.
  - (1). In general.
  - (2). Negligence.
    - (2.1). — In general.

**V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (3). — Injury to person or property not on highway.
- (4). — Willful, wanton, or reckless act.
- (5). — Acts in emergencies.
- (6). — Injuries to persons on foot.
- (7). — Injuries to children.
- (8). — Persons working on or in highway.
- (9). — Persons moving to or from street cars.
- (10). — Vehicles meeting.
- (11). — Vehicles crossing.
- (12). — Vehicles following, overtaking, or passing.
- (13). — Collision with bicycle or motorcycle.
- (14). — Vehicles at rest or unattended.
- (15). — Towing vehicles or vehicles in tow.
- (16). — Vehicles used in saving life or property or enforcing law.
- (17). — Injuring or frightening animals.
- (18). — Articles projecting, falling, or thrown from vehicles.
- (19). — Railroad or street cars or occupants.
- (20). — Operator injuring occupant.
- (21). Violation of statute or ordinance in general.
- (22). Identity and status of operator.
  - (22.1). — In general.
- (23). — Husband and wife.
- (24). — Parent and child.
- (25). — Borrower or hirer.
- (26). — Agent or servant.
- (27). — Servants employed by or under control of third person.
- (28). — Acts of servant in behalf of himself or third person.
- (29). — Independent contractors.
- (30). — Owner's liability for acts of member of family.
- (31). Competency of operator.

**48A. AUTOMOBILES****V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (32). Identity and ownership of vehicle.
  - (33). Equipment and lights.
  - (34). Signals and lookouts.
  - (35). Speed and control.
  - (36). Proximate cause of injury.
  - (36.1). — In general.
  - (37). — Speed and control.
  - (38). — Equipment and lights.
  - (39). — Frightening animals.
  - (40). — Inevitable accident.
  - (41). Contributory negligence.
  - (41.1). — In general.
  - (42). — Vehicles meeting.
  - (43). — Vehicles crossing.
  - (44). — Vehicles overtaking or passing.
  - (45). — Vehicles stopped or standing.
  - (46). — Bicycle riders.
  - (47). — Motorcycle riders.
  - (48). — Owners, riders, or drivers of animals.
  - (49). — Persons on foot in general.
  - (50). — Persons crossing highway.
  - (51). — Persons walking along highway.
  - (52). — Persons working on or in highway.
  - (53). — Persons moving to or from street cars.
  - (54). — Persons standing or sitting in highway.
  - (55). — Children.
  - (56). — Passenger, guest, or occupant.
  - (57). — Acts in emergencies.
  - (58). — Proximate cause of injury.
  - (59). — Injury avoidable notwithstanding contributory negligence.
  - (60). — Comparative negligence and apportionment of fault.
  - (61). — Imputed contributory negligence.
245. Questions for jury.
- (1). In general.
  - (2). Care required and negligence.

**V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (2.1). — In general.
- (3). — Driving on wrong side of road.
- (4). — Injuries to persons or property not on highway.
- (5). — Willful, wanton, or reckless acts.
- (6). — Persons on foot.
- (7). — Persons under disability.
- (8). — Children.
- (9). — Persons working on or in highway.
- (10). — Persons moving to or from street cars.
- (11). — Persons entering or leaving vehicles other than street cars.
- (12). — Persons emerging from behind obstructions.
- (13). — Vehicles meeting.
- (14). — Vehicles crossing.
- (15). — Vehicles following, overtaking, or passing.
- (16). — Collision with bicycle or motorcycle.
- (17). — Vehicles at rest or unattended.
- (18). — Towing vehicles or vehicles in tow.
- (19). — Vehicles used in saving life or property or enforcing law.
- (20). — Injuring or frightening animals.
- (22). — Injuries to railroad or street cars or occupants.
- (23). — Articles projecting, falling, or thrown from vehicle.
- (24). — Operator injuring occupant.
- (25). Violation of statute or ordinance in general.
- (26). Identity and status of operator.
- (26.1). — In general.
- (27). — Parent and child.
- (28). — Employee or agent.
- (29). — Persons employed by or under control of third person.
- (30). — Scope of employment.

**48A. AUTOMOBILES****V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (31). — Acts of employee in behalf of himself or of third person.
- (32). — Independent contractors.
- (33). — Owner's liability for acts of member of family.
- (34). — Occupant of vehicle driven by another.
- (35). Competency of operator.
- (36). Identity and ownership of vehicle.
- (37). Place of accident.
- (38). Lights and equipment.
- (39). Lookout, signals, and warnings.
- (40). Speed and control.
- (40.1). — In general.
- (41). — Nature of highway.
- (42). — Meeting vehicles or persons.
- (43). — Passing vehicles or persons.
- (44). — Intersections and crossings.
- (45). — Corners and curves.
- (46). — Darkness or fog.
- (47). — Obstruction of view.
- (48). — Racing.
- (49). Acts in emergencies.
- (50). Proximate cause of injury.
- (50.1). — In general.
- (51). — Violation of law in general.
- (52). — Lights.
- (53). — Lookouts, signals and warnings.
- (54). — Incompetency of operator.
- (55). — Injuries to persons on foot.
- (56). — Injuries to persons under disability.
- (57). — Injuries to children.
- (58). — Injuries to persons moving to or from street cars.
- (59). — Speed and control.
- (60). — Vehicles meeting, following, overtaking, and passing.
- (61). — Vehicles crossing.
- (62). — Vehicles at rest or unattended.
- (63). — Injuring or frightening animals.
- (64). — Concurrent causes.
- (65). — Intervening efficient cause.

**V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (66). — Inevitable accident.
  - (67). Contributory negligence.
  - (67.1). — In general.
  - (68). — Violation of law.
  - (69). — Lights on vehicles.
  - (70). — Injuries to persons or property not on highway.
  - (71). — Incompetency or inexperience of operator.
  - (72). — Persons on foot in general.
  - (73). — Persons under disability.
  - (74). — Children.
  - (75). — Persons working on or in highway.
  - (76). — Persons moving to or from street cars.
  - (77). — Persons entering or leaving vehicles other than street cars.
  - (78). — Speed and control.
  - (79). — Vehicles meeting.
  - (80). — Vehicles crossing.
  - (81). — Vehicles following, overtaking, and passing.
  - (82). — Bicycle or motorcycle riders.
  - (83). — Vehicles at rest or unattended.
  - (84). — Injuring or frightening animals.
  - (85). — Injuries to motor vehicle or occupant by collision with animals.
  - (86). — Operators or occupants of railroad or street cars.
  - (87). — Occupant injured by operator.
  - (88). — Occupant injured by another vehicle.
  - (89). — Acts in emergencies.
  - (90). — Proximate cause of injury.
  - (91). — Injury avoidable notwithstanding contributory negligence.
  - (92). — Comparative negligence and apportionment of fault.
  - (93). — Imputed contributory negligence.
246. Instructions.

**48A. AUTOMOBILES****V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (1). In general.
- (2). Care required and negligence.
- (2.1). — In general.
- (3). — Willful, wanton, or reckless acts or conduct.
- (4). — Persons on foot in general.
- (5). — Injuries to children.
- (6). — Persons moving to or from street cars.
- (7). — Vehicles stopping, backing or turning.
- (8). — Vehicles meeting.
- (9). — Vehicles crossing.
- (10). — Collision with bicycle or motorcycle.
- (11). — Vehicles following, overtaking, or passing.
- (12). — Injuring or frightening animals.
- (13). — Vehicles at rest or unattended.
- (14). Violation of statute or ordinance in general.
- (15). Identity and status of operator.
- (16). Competency of operator.
- (17). Identity and ownership of vehicle.
- (18). Lights and equipment.
- (19). Lookout, signals, and warnings.
- (20). Speed and control.
- (21). Acts in emergencies.
- (22). Proximate cause of injury.
- (23). Contributory negligence.
- (23.1). — In general.
- (24). — Reliance on care of person causing injury.
- (25). — Vehicles meeting or crossing.
- (26). — Vehicles following, overtaking, or passing.
- (27). — Vehicles at rest or unattended.
- (28). — Collision with bicycle or motorcycle.
- (29). — Owners, riders, or drivers of animals.
- (30). — Persons on foot in general.

**V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (31). — Persons crossing or walking along highway.
- (32). — Persons moving to or from street cars.
- (33). — Persons standing or sitting in highway or street.
- (34). — Persons under disability in general.
- (35). — Children.
- (36). — Passenger, guest or occupant.
- (37). — Acts in emergencies.
- (38). — Injury avoidable notwithstanding contributory negligence.
- (38.5). — Comparative negligence and apportionment of fault.
- (38.6). — Imputed contributory negligence.
- (39). Applicability to pleadings and evidence.
- (39.1). — In general.
- (40). — Violation of statute or ordinance in general.
- (41). — Equipment and lights on vehicles.
- (42). — Identity, status and competency of operator.
- (43). — Signals and warnings.
- (44). — Defects in vehicles.
- (45). — Willful, wanton, or reckless acts or conduct.
- (46). — Vehicles stopping, backing, or turning.
- (47). — Vehicles meeting or crossing.
- (48). — Vehicles following, overtaking, or passing.
- (49). — Persons on foot in general.
- (50). — Persons crossing or walking along highway or street.
- (51). — Children.
- (52). — Persons moving to or from street cars.
- (53). — Persons standing or sitting in highway or street.
- (54). — Passenger, guest or occupant.



**48A. AUTOMOBILES****V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- (55). — Vehicles at rest or unattended.
- (56). — Speed and control.
- (57). — Proximate cause of injury.
- (58). — Contributory and comparative negligence; apportionment.
- (59). — Injuring or frightening animals.
- (60). Presumptions and burden of proof.
- 247. Verdict and findings.
- 248. Judgment and review.
- 249. Damages.  
*Compensatory damages for personal injuries, see DAMAGES.*
- 249.1. — In general.
- 249.2. — Punitive or exemplary damages; double or treble damages.
- 249.3. — Damage caps.
- 249.4. — Restrictions on uninsured or underinsured motorists.
- 250. Lien on vehicle for injuries.
- 251. Costs.

**(C) ACCIDENT INDEMNITY FUNDS.**

- 251.1. Uninsured or unknown motorists indemnity funds in general.
- 251.2. Statutory provisions.
- 251.3. Persons protected.
- 251.4. Limitation of liability.
- 251.5. Proceedings for compensation.
- 251.6. — Notice.
- 251.7. — Arbitration.
- 251.8. — Evidence.
- 251.9. — Other matters.

**(D) EFFECT OF NO FAULT STATUTES.**

- 251.11. In general.
- 251.12. Constitutional and statutory provisions.
- 251.13. Vehicles, persons or occurrences within restrictions.
- 251.14. "Threshold" requirement in general.
- 251.15. Nature of injury; serious or permanent injury.
- 251.16. Expenses included in threshold computation.

**V. INJURIES FROM OPERATION, OR  
USE OF HIGHWAY.(Cont'd)**

- 251.17. Elements of recovery; economic or non-economic loss.
- 251.18. Procedure peculiar to no fault cases; jurisdiction.
- 251.19. Evidence and fact questions; instructions.

**(E) PROVIDERS OF INTOXICATING  
OR IMPAIRING SUBSTANCES.**

- 251.21. In general.
- 251.22. Alcoholic beverages.
- 251.23. — In general.
- 251.24. — Non-commercial providers; social hosts.
- 251.25. — Employers and unions.
- 251.26. Marijuana and other drugs.
- 251.27. — In general.
- 251.28. — Prescription medications.

**VI. INJURIES FROM DEFECTS OR  
OBSTRUCTIONS IN HIGHWAYS  
AND OTHER PUBLIC PLACES.****(A) NATURE AND GROUNDS OF LIABILITY.**

- 252. In general.
- 253. Requirements of statutes and ordinances.
- 254. Places to which liability extends.
- 255. Cause of or responsibility for defects, obstructions, or dangerous conditions.
- 256. Care required as to condition of way in general.
- 257. Sufficiency and safety of way in general.
- 258. Nature of defects.
- 259. Defective plan of construction.
- 260. Oil or tar on highway.
- 261. Embankments, excavations, and openings.
- 262. Water, snow, or ice.
- 263. Obstructions.
- 264. — In general.
- 265. — Poles and wires.
- 266. Failure to prevent or remove defects or obstructions.
- 267. Smoke or steam obstructing view.
- 268. Falling objects.
- 269. Property adjacent to highway.
- 270. Bridges.
- 271. Culverts.

**48A. AUTOMOBILES****VI. INJURIES FROM DEFECTS OR OBSTRUCTIONS IN HIGHWAYS AND OTHER PUBLIC PLACES.(Cont'd)**

- 272. Notice of defects or obstructions.
- 277. Precautions against injuries.
- 277.1. — In general.
- 278. — Barriers, guards, and fences.
- 279. — Notices, warning signals, or lights.
- 280. Rights of persons injured in general.
- 281. Status of injured person as traveler or trespasser.
- 282. Proximate cause.
- 283. Contributory negligence.
- 284. — In general.
- 285. — Knowledge of, and duty to observe, defect or danger.
- 286. — Equipment, lights, speed, and control.
- 287. — Persons under disability.
- 288. — Proximate cause of injury.
- 288.5. — Comparative negligence and apportionment of fault.
- 288.6. — Imputed contributory negligence.
- 289. Liabilities of abutting owners or occupiers.
- 289.5. Animals.
- 290. Liabilities of contractors, public utilities, and others.

**(B) ACTIONS.**

- 291. Nature and form of remedy.
- 292. Grounds and conditions precedent in general.
- 293. Notice of claim for injury.
- 294. Defenses.
- 295. Jurisdiction and venue.
- 296. Time to sue and limitations.  
*See also LIMITATION OF ACTIONS.*
- 297. Parties.
- 298. Process.
- 299. Pleading.
- 300. — In general.
- 301. — Declaration, complaint, or petition.
  - (1). In general.
  - (2). Existence or location of way.
  - (3). Duty or liability of defendant in general.
  - (4). Notice of defects or obstructions.
  - (5). Notice of claim for injury.

**VI. INJURIES FROM DEFECTS OR OBSTRUCTIONS IN HIGHWAYS AND OTHER PUBLIC PLACES.(Cont'd)**

- (6). Negating contributory negligence or other fault.
- 302. — Plea or answer.
- 303. — Issues, proof, and variance.
- 304. Presumptions and burden of proof.
  - (1). In general.
  - (2). Existence of defect or happening of injury.
  - (3). Contributory and comparative negligence; apportionment.
- 305. Admissibility of evidence.
  - (1). In general.
  - (2). Negligence in general.
  - (3). Existence or location of way.
  - (4). Condition of way.
  - (5). Notice of defects or obstructions.
  - (6). Other accidents.
  - (8). Notice of claim for injury.
  - (9). Proximate cause.
  - (10). Contributory and comparative negligence; apportionment.
- 306. Weight and sufficiency of evidence.
  - (1). In general.
  - (2). Negligence in general.
  - (3). Existence or location of way.
  - (4). Condition of way.
  - (5). Notice of defects or obstructions.
  - (6). Notice of claim for injury.
  - (7). Proximate cause.
  - (8). Contributory negligence.
  - (9). Comparative negligence and apportionment of fault.
- 307. Conduct of trial in general.
- 308. Questions for jury.
  - (1). In general.
  - (2). Negligence in general.
  - (3). Existence or location of way.
  - (4). Condition of way and nature of defects or obstructions.
  - (5). Excavations.
  - (6). Precautions against injury.
  - (7). Notice of defects or obstructions.
  - (8). Negligence of abutting owner.
  - (9). Negligence of contractors, public utilities, and others.
  - (10). Proximate cause of injury.

**48A. AUTOMOBILES****VI. INJURIES FROM DEFECTS OR OBSTRUCTIONS IN HIGHWAYS AND OTHER PUBLIC PLACES.(Cont'd)**

- (11). Contributory and comparative negligence; apportionment.
- (12). Notice of claim for injury.
- 309. Instructions to jury.
  - (1). In general.
  - (2). Negligence in general.
  - (3). Notice of defects or obstructions.
  - (4). Contributory and comparative negligence; apportionment.
- 310. Verdict and findings.
- 311. Judgment.
- 312. Appeal and error.
- 313. Damages.
 

*Compensatory damages for personal injuries, see DAMAGES.*
- 314. Costs.

**VII. OFFENSES.****(A) IN GENERAL.**

- 315. Power to define and punish crimes.
- 316. Creation and definition of offenses; constitutional and statutory provisions.
- 317. Application of common law.
- 318. Concurrent and conflicting regulations by state and municipality.
- 319. Knowledge, intent, and malice.
- 320. Defenses.
- 321. Capacity to commit crime.
- 322. Persons acting under authority or direction of others.
- 323. Parties to offenses.
- 324. Offenses in general.
- 325. Sale or transfer.
- 326. License and registration.
- 327. Equipment in general.
- 328. Lights.
- 329. Signals and signaling devices.
- 330. Reckless operation.
- 331. Excessive speed, lack of control, and racing.
- 332. Driving while intoxicated.
- 333. Stopping, standing, and parking.
- 334. Leaving vehicle unattended.
- 335. Violation of traffic regulations.
- 336. Neglect of duty after accident.
- 337. Excessive loads, and injuries to highways and bridges.

**VII. OFFENSES.(Cont'd)**

- 338. Frightening or injuring animals.
- 339. Taking and using vehicle or parts without consent of owner.
- 340. Identification marks altered or removed.
- 341. Movement of stolen cars in interstate commerce.
- 342. Homicide.
  - 342.1. — In general.
- 343. — Murder.
- 344. — Manslaughter.
- 345. — Assault with intent to kill.
- 346. — Excuse or justification.
- 347. Assault and battery.
- 348. Malicious mischief.

**(B) PROSECUTION.**

- 349. Arrest, stop, or inquiry; bail or deposit.
 

*For summons, ticket, or complaint, see also §351, below.*

  - (1). In general.
  - (2). Grounds.
    - (2.1). — In general.
  - (4). — License or registration of-  
fenses, in general.
  - (5). — Equipment or inspection of-  
fenses, in general.
    - (5.1). — License plates and registration stickers, in general.
    - (5.2). — License plate lights.
    - (5.3). — Seat belts or restraints; protection of children.
  - (6). — Intoxication.
  - (7). — Investigation of unrelated offenses leading to discovery of traffic offense.
  - (8). — Traffic offense stop leading to discovery of unrelated offense.
  - (9). Roadblock, checkpoint, or routine or random stop.
  - (10). What is arrest or seizure; stop distinguished.
  - (11). Who may arrest, stop, or inquire.
  - (12). Place and time.
  - (13). Authority under warrant.
  - (14). Conduct of arrest, stop, or inquiry.
    - (14.1). — In general.

**48A. AUTOMOBILES****VII. OFFENSES.(Cont'd)**

- (15). — Custodial arrest or less punitive measures.
- (16). — Ordering occupants out of vehicle.
- (17). — Detention, and length and character thereof.
- (18). — Inquiry; license, registration, or warrant checks.
- (19). — Disposition of person; bail or deposit.
- 349.5. Search or seizure consequent to arrest, stop or inquiry.  
*Excludes sobriety tests, see AUTOMOBILES*  
*411-426, below.*
  - (1). In general.
  - (3). Stop or arrest as pretext or ruse, in general.
  - (4). Probable or reasonable cause, in general.
  - (5). Object, product, scope, and conduct of search, seizure, or inspection.
  - (5.1). — In general.
  - (6). — Evidence of unrelated offenses, in general.
  - (7). — Drugs and narcotics.
  - (8). — Plain view; observation.
  - (9). — Persons, search of.
  - (10). — Weapons; protective searches; pat-down.
  - (11). — Compartments and closed containers.
  - (12). — Time and place; impoundment, inventory, or booking.
- 350. Jurisdiction and venue.
- 351. Charging instrument; summons or ticket.
- 351.1. — In general.
- 352. — Issues, proof, and variance.
- 353. Presumptions and burden of proof.
  - (1). In general.
  - (2). License and registration.
  - (3). Equipment.
  - (4). Reckless operation.
  - (5). Excessive speed, lack of control, and racing.
  - (6). Driving while intoxicated.
  - (7). Stopping, standing, and parking.
  - (8). Neglect of duty after accident.

**VII. OFFENSES.(Cont'd)**

- (9). Frightening or injuring animals.
- (10). Taking and using without consent of owner.
- (11). Identification marks altered or removed.
- (12). Movement of stolen cars in interstate commerce.
- (13). Homicide.
- (14). Assault and battery.
- (15). Malicious mischief.
- 354. Admissibility of evidence.
  - (1). In general.
  - (2). License and registration.
  - (3). Equipment.
  - (4). Reckless operation.
  - (5). Excessive speed, lack of control, and racing.
  - (6). Driving while intoxicated.  
*Excludes evidence of sobriety tests, see IX.*
  - (7). Stopping, standing, and parking.
  - (8). Neglect of duty after accident.
  - (9). Frightening or injuring animals.
  - (10). Taking and using without consent of owner.
  - (11). Identification marks altered or removed.
  - (12). Movement of stolen cars in interstate commerce.
  - (13). Homicide.
  - (14). Assault and battery.
  - (15). Malicious mischief.
- 355. Weight and sufficiency of evidence.
  - (1). In general.
  - (2). License and registration.
  - (3). Equipment.
  - (4). Reckless operation.
  - (5). Excessive speed, lack of control, and racing.
  - (6). Driving while intoxicated.
  - (7). Stopping, standing, and parking.
  - (8). Neglect of duty after accident.
  - (9). Frightening or injuring animals.
  - (10). Taking and using without consent of owner.
  - (11). Identification marks altered or removed.
  - (12). Movement of stolen cars in interstate commerce.
  - (13). Homicide.

**48A. AUTOMOBILES****VII. OFFENSES.(Cont'd)**

- (14). Assault and battery.
- (15). Malicious mischief.
- 356. Questions for jury.
  - (1). In general.
  - (2). License and registration.
  - (3). Equipment.
  - (4). Reckless operation.
  - (5). Excessive speed, lack of control, and racing.
  - (6). Driving while intoxicated.
  - (7). Stopping, standing, and parking.
  - (8). Neglect of duty after accident.
  - (9). Frightening or injuring animals.
  - (10). Taking and using without consent of owner.
  - (11). Identification marks altered or removed.
  - (12). Movement of stolen cars in interstate commerce.
  - (13). Homicide.
  - (14). Assault and battery.
  - (15). Malicious mischief.
- 357. Instructions.
  - (1). In general.
  - (2). License and registration.
  - (3). Equipment.
  - (4). Reckless operation.
  - (5). Excessive speed, lack of control, and racing.
  - (6). Driving while intoxicated.
  - (7). Stopping, standing, and parking.
  - (8). Neglect of duty after accident.
  - (9). Frightening or injuring animals.
  - (10). Taking and using without consent of owner.
  - (11). Identification marks altered or removed.
  - (12). Movement of stolen cars in interstate commerce.
  - (13). Homicide.
  - (14). Assault and battery.
  - (15). Malicious mischief.
- 358. Verdict and findings.

**(C) SENTENCE AND PUNISHMENT.**

- 359.1. In general.
- 359.2. Homicide in general.
- 359.3. Driving while intoxicated.
- 359.4. — In general.

**VII. OFFENSES.(Cont'd)**

- 359.5. — Cases involving death.
- 359.6. — Repeat offenders.

**(D) REVIEW.**

*Includes only review of administrative, civil, or quasi-criminal traffic violation proceedings; for review of criminal proceedings, see CRIMINAL LAW XXIV.*

- 360. In general.

**(E) COSTS.**

- 361. In general.

**VIII. GARAGE KEEPERS, REPAIRMEN, AUTO LIVERYMEN, AND FILLING STATIONS.**

- 362. Power to regulate.
- 363. Statutory and local regulations.
- 364. Who are garage keepers.
- 365. Licenses and taxes.
- 366. Buildings.
- 367. Garage as nuisance.
- 368. Repairs and other services and supplies.
- 369. Storage of vehicles; parking facilities.  
*See also BAILMENT.*
- 370. — In general.
- 371. — Compensation.
- 372. — Injury to or loss of vehicle or contents.
  - (1). In general; nature of relation.
  - (2). Limitation of liability.
  - (3). Actions.
  - (3.1). — In general.
  - (4). — Evidence and fact questions.
- 373. Lien.
- 374. — In general.
- 375. — Consent or agreement of owner.
- 376. — Contract with conditional buyer.
- 377. — Contract with infant.
- 378. — Possession by lienor.
- 379. — Services or supplies for which allowed.
- 380. — Assignment or transfer.
- 381. — Waiver or loss.
- 382. — Reinstatement.
- 383. — Priorities.
- 384. — Proceedings to perfect.
- 385. — Enforcement.
- 386. Vehicle rentals.
- 387. — In general.
- 388. — Injuries to person of hirer.
- 389. — Liability of hirer in general.

**48B. AVIATION****VIII. GARAGE KEEPERS, REPAIRMEN,  
AUTO LIVERYMEN, AND FILLING  
STATIONS.**(Cont'd)

- 390. — Injuries to vehicle.
- 391. — Injuries to third persons.
- 392. Penalties for violation of regulations.
- 393. Offenses by garage keepers.
- 394. Offenses by persons dealing with garage keepers.
- 395. Filling stations.

**IX. EVIDENCE OF SOBRIETY TESTS.**

*Excludes admissibility in civil actions: See EVIDENCE* ¶150.

- 411. In general.
- 412. Constitutional and statutory provisions.
- 413. Refusal of test, admissibility.
- 414. Right to take sample or conduct test; initiating procedure.
- 415. Motorists' right to test or to additional or alternative test.
- 416. Time for test.
- 417. Grounds for test.
- 417.1. — In general.
- 418. — Consent, express or implied.
- 419. — Grounds or cause; necessity for arrest.
- 420. — Motorist unconscious or incompetent.
- 421. Advice or warnings; presence of counsel or witness.
- 422. Conduct and proof of test; foundation or predicate.
- 422.1. — In general.
- 423. — Competency of officer or technician.
- 424. — Reliability of particular testing devices.
- 425. — Identification and integrity of sample.
- 426. Procedure; evidence and fact questions.

*Excludes issues appropriate for* ¶422–424, *above.*

**48B. AVIATION****SUBJECTS INCLUDED**

Activity of flying or operation of aircraft

Sovereignty, in and ownership of air space  
Regulation, control and licensing of aviation, aircraft and airmen  
Airlines and other carriers, control, licensing and regulation  
Injuries from operation of aircraft and actions for such injuries  
Airports, facilities and services incidental to operation and maintenance of aircraft

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Compensatory damages for injuries, see DAMAGES  
Crop spraying or dusting, and similar incidental activities, duties and liabilities, see AGRICULTURE  
Employers' rights, duties and liabilities as to their employees, see LABOR AND EMPLOYMENT, WORKERS' COMPENSATION  
General contractual rights, duties and liabilities, and consideration of aircraft as property, see CARRIERS, CHATTEL MORTGAGES, EXEMPTIONS, INSURANCE, SALES, SECURED TRANSACTIONS, TAXATION and other specific topics  
Insurance policies, life and accident, aviation exclusion clauses, see INSURANCE  
Particular offenses not involving aviation regulations, nor direct injuries from negligent or wrongful use of aircraft, see ALCOHOLIC BEVERAGES, CUSTOMS DUTIES, LARCENY, and other specific topics  
Particular remedies, see CREDITORS' REMEDIES, REPLEVIN, and other specific topics  
Public carriers, rights, duties and liabilities as to passengers and freight, see CARRIERS  
Tort liability of manufacturers, distributors and others for defects or dangers in aircraft or parts thereof, see PRODUCTS LIABILITY

- I. IN GENERAL, ¶301–330.
- II. AGENCIES, BOARDS, COMMISSIONS, AND DEPARTMENTS, ¶331–340.
- III. PARTICULAR SUBJECTS OF CONTROL AND REGULATION, ¶341–460.
- (A) IN GENERAL, ¶341–360.

**48B. AVIATION**

- III. PARTICULAR SUBJECTS OF CONTROL AND REGULATION—Cont'd
  - (B) AVIATORS AND AVIATION PERSONNEL, ¶361–380.
  - (C) AIR CARRIERS; AIRLINES, ¶381–400.
  - (D) AVIATION FACILITIES AND SERVICES; AIRPORTS, ¶401–460.
    - 1. IN GENERAL, ¶401–430.
    - 2. USE OF FACILITIES FOR NON-AVIATION PURPOSES, ¶431–440.
    - 3. CONTRACTS, LEASES, AND CONCESSIONS, ¶441–450.
    - 4. GROUND TRANSPORTATION, ¶451–460.
- IV. PROCEEDINGS CONCERNING CONTROL AND REGULATION, ¶461–530.
  - (A) IN GENERAL, ¶461–480.
  - (B) JUDICIAL REVIEW AND ENFORCEMENT OF ADMINISTRATIVE ACTION, ¶481–510.
  - (C) EVIDENCE, ¶511–530.
- V. CIVIL LIABILITY FOR INJURIES TO PERSONS OR PROPERTY, ¶531–620.
  - (A) IN GENERAL, ¶531–570.
  - (B) ACTIONS AND PROCEEDINGS, ¶571–620.
- VI. NUISANCE AND TRESPASS, ¶621–640.
- VII. PENALTIES, ¶641–650.
- VIII. CRIMINAL LIABILITY, ¶651–667.

**I. IN GENERAL.**

- 301. In general.
- 302. Power to control and regulate in general.
- 303. Constitutional provisions, statutes, and ordinances in general.
- 304. Airspace.
- 305. — In general.
- 306. — Sovereignty in airspace.
- 307. — Property rights; ownership.
- 308. — Easements.
- 309. — Airspace reservations.
- 310. What law governs.
- 311. — In general.
- 312. — Civil liability for injuries to persons or property.
- 313. — Nuisance and trespass.
- 314. Exclusive, concurrent, and conflicting laws and regulations, in general.
- 315. Relation between federal law and state or local law; federal preemption.

**I. IN GENERAL.(Cont'd)**

- 316. — In general.
- 317. — Aviators and aviation personnel.
- 318. — Air carriers; airlines.
- 319. — Aviation facilities and services; airports.
- 320. — Charges, fees, and taxes.
- 321. — Environmental considerations; noise.
- 322. — Civil liability for injuries to persons or property.
- 323. — Nuisance and trespass.
- 324. — Criminal liability.
- 325. Relation between state law and local law.

**II. AGENCIES, BOARDS, COMMISSIONS, AND DEPARTMENTS.**

- 331. In general.
- 332. Jurisdiction, powers, and authority in general.
- 333. Officers and employees.
- 334. — In general.
- 335. — Immunity.
- 336. Rules and regulations.
- 337. — In general.
- 338. — Notice and comment.
- 339. Administrative construction of statutes and regulations; judicial deference.

**III. PARTICULAR SUBJECTS OF CONTROL AND REGULATION.****(A) IN GENERAL.**

- 341. In general.
- 342. Aircraft in general.
- 343. — In general.
- 344. — What are aircraft.
- 345. — Certification and registration.
  - (1). In general.
  - (2). Airworthiness.
- 346. — Transfer and encumbrance.
- 347. Operation of aircraft; flying.
- 348. — In general.
- 349. — Altitude in general.
- 350. — Approaches and landings.

**(B) AVIATORS AND AVIATION PERSONNEL.**

- 361. In general.
- 362. Power to control and regulate.

**48B. AVIATION****III. PARTICULAR SUBJECTS OF CONTROL  
AND REGULATION.(Cont'd)**

- 363. Licenses, permits, and certificates.
- 364. — In general.
- 365. — Amendment.
- 366. — Renewal in general.
- 367. — Suspension, revocation, or non-renewal.
- 368. — Other disciplinary matters.
- 369. — Charges, fees, and taxes.
- 370. Flight instructors.
- 371. Mechanics.

**(C) AIR CARRIERS; AIRLINES.**

- 381. In general.
- 382. Power to control and regulate.
- 383. Who are carriers.
- 384. Licenses, permits, and certificates.
- 385. — In general.
- 386. — Power to issue.
- 387. — Eligibility for and subjects of.
- 388. — Construction, operation, and effect.
- 389. — Amendment and modification; transfer.
- 390. — Suspension or revocation.
- 391. — Charges, fees, and taxes.
- 392. Operation and management.
- 393. — In general.
- 394. — Deregulation in general.
- 395. — Rates, routes, and services in general.
- 396. — Consolidation, merger, and acquisition of control.
- 397. — Methods of competition.
- 398. — Pooling and other agreements.
- 399. Flight and duty limitations; restrictions regarding crew.

**(D) AVIATION FACILITIES AND  
SERVICES; AIRPORTS.****1. IN GENERAL.**

- 401. In general.
- 402. Power to control and regulate.
- 403. Establishment and maintenance of facilities.
- 404. — In general.
- 405. — Renovation and expansion.
- 406. — Relocation, closure, and abandonment.

**III. PARTICULAR SUBJECTS OF CONTROL  
AND REGULATION.(Cont'd)**

- 407. Operation and use of facilities in general.
- 408. Licenses, permits, and certificates in general.
- 409. Charges, fees, and taxes in general.
- 410. — In general.
- 411. — Landing fees.
- 412. Obstructions and hazards.
- 413. Aids to navigation.
- 414. Air traffic control.
- 415. Aviation security.
- 416. Aircraft maintenance, repairs, services, and supplies.
- 417. — In general.
- 418. — Hangars, parking, and storage.
- 419. — Lien.
- 420. Rental of aircraft.
- 421. Flight schools; training of aviators.
- 422. Environmental considerations; noise.

**2. USE OF FACILITIES FOR NON-  
AVIATION PURPOSES.**

- 431. In general.
- 432. Speech and expressive activities in general.
- 433. Advertising and signs.
- 434. Protests and demonstrations.
- 435. Soliciting, canvassing, pamphletting, leafletting, and fundraising.
- 436. Newsracks and newsstands.

**3. CONTRACTS, LEASES, AND CONCESSIONS.**

- 441. In general.
- 442. Power to make.
- 443. Bidding and bid protests.
- 444. Formation, requisites, and validity.
- 445. Construction, operation, performance, and breach in general.
- 446. Duration and termination; renewal; modification.
- 447. Licenses, permits, and certificates.
- 448. Rent or other compensation; charges, fees, and taxes.

**4. GROUND TRANSPORTATION.**

- 451. In general.
- 452. Parking in general.



**48B. AVIATION****III. PARTICULAR SUBJECTS OF CONTROL AND REGULATION.(Cont'd)**

- 453. Licenses, permits, and certificates.
- 454. Charges, fees, and taxes.

**IV. PROCEEDINGS CONCERNING CONTROL AND REGULATION.****(A) IN GENERAL.**

- 461. In general.
- 462. Civil actions and proceedings.
- 463. — In general.
- 464. — Right of action; standing.
- 465. Administrative proceedings.
- 466. — In general.
- 467. — Aviators and aviation personnel.
- 468. — Air carriers; airlines.
- 469. — Aviation facilities and services; airports.
- 470. Investigations.
- 471. — In general.
- 472. — Accidents and crashes.
- 473. Subpoenas.
- 474. Administrative review of administrative action.
- 475. Exclusive, concurrent, and primary jurisdiction.
- 476. Exhaustion of administrative remedies.

**(B) JUDICIAL REVIEW AND ENFORCEMENT OF ADMINISTRATIVE ACTION.**

- 481. In general.
- 482. Power to review or enforce; jurisdiction.
- 483. Nature and form of remedy.
- 484. Decisions reviewable.
- 485. — In general.
- 486. — Finality; interlocutory review.
- 487. — Prematurity; ripeness.
- 488. — Mootness.
- 489. Persons entitled to seek review or enforcement; parties; standing.
- 490. Time for proceedings.
- 491. Petition or other application; briefs.
- 492. Preservation of error; waiver and estoppel; record.
- 493. Proceedings on review; hearing.
- 494. Scope, standard, and extent of review.
- 495. — In general.
- 496. — De novo review in general.
- 497. — Particular subjects of review.
  - (1). In general.

**IV. PROCEEDINGS CONCERNING CONTROL AND REGULATION.(Cont'd)**

- (2). Questions of law or fact in general.
- (3). Aviators and aviation personnel.
- (4). Air carriers; airlines.
- (5). Aviation facilities and services; airports.
- (6). Investigations; accidents and crashes.
- (7). Subpoenas.
- 498. Presumptions and burden of showing error.
- 499. Harmless and reversible error.
- 500. Determination and disposition.
- 501. Further judicial review.

**(C) EVIDENCE.**

- 511. In general.
- 512. Presumptions, inferences, and burden of proof.

*Presumptions and burden of showing error as to judicial review and enforcement of administrative action, see*  
 ⚡498.

- 513. — In general.
- 514. — Aviators and aviation personnel.
- 515. — Air carriers; airlines.
- 516. — Aviation facilities and services; airports.
- 517. — Investigations; accidents and crashes.
- 518. Admissibility.
- 519. — In general.
- 520. — Administrative proceedings.
- 521. Degree of proof.
- 522. Weight and sufficiency.
- 523. — In general.
- 524. — Aviators and aviation personnel.
- 525. — Air carriers; airlines.
- 526. — Aviation facilities and services; airports.
- 527. — Investigations; accidents and crashes.

**V. CIVIL LIABILITY FOR INJURIES TO PERSONS OR PROPERTY.****(A) IN GENERAL.**

- 531. In general.
- 532. Operation of aircraft in general.
- 533. — In general.

**48B. AVIATION****V. CIVIL LIABILITY FOR INJURIES TO PERSONS OR PROPERTY.(Cont'd)**

- 534. — Duty, standard of care, and breach of duty.
- 535. — Causation.
- 536. — Persons liable; immunity.
  - (1). In general.
  - (2). Government entities in general.
  - (3). Federal government.
  - (4). Public employees.
- 537. — Contributory negligence and comparative fault; apportionment.
- 538. — Assumption of risk.
- 539. Maintenance and operation of airports in general.
- 540. — In general.
- 541. — Premises liability.
- 542. — Persons liable; immunity.
- 543. Obstructions and hazards.
- 544. Aids to navigation.
- 545. — In general.
- 546. — Weather information, reports, and forecasts.
- 547. Air traffic control.
- 548. — In general.
- 549. — Duty, standard of care, and breach of duty.
- 550. — Causation.
- 551. — Persons liable; immunity.
  - (1). In general.
  - (2). Government entities in general.
  - (3). Federal government.
  - (4). Public employees.
- 552. — Contributory negligence and comparative fault; apportionment.
- 553. — Assumption of risk.
- 554. Aviation security.
- 555. — In general.
- 556. — Persons liable; immunity.
  - (1). In general.
  - (2). Government entities in general.
  - (3). Federal government.
  - (4). Public employees.
- 557. Repairs and maintenance of aircraft.
- 558. Hangars, parking, and storage.
- 559. — In general.
- 560. — Injuries to persons.
- 561. — Injuries to or loss of aircraft.

**V. CIVIL LIABILITY FOR INJURIES TO PERSONS OR PROPERTY.(Cont'd)**

- 562. Rental or lease of aircraft.
- 563. Flight schools; training of aviators.
- (B) ACTIONS AND PROCEEDINGS.**
- 571. In general.
- 572. Persons entitled to sue; parties; standing.
- 573. Pleading.
- 574. Presumptions, inferences, and burden of proof.
- 575. — In general.
- 576. — Happening of accident or injury; *res ipsa loquitur*.
- 577. Admissibility of evidence.
- 578. Weight and sufficiency of evidence.
- 579. — In general.
- 580. — Operation of aircraft in general.
- 581. — Maintenance and operation of airports in general.
- 582. — Aids to navigation.
- 583. — Air traffic control.
- 584. — Aviation security.
- 585. — Repairs and maintenance of aircraft.
- 586. — Hangars, parking, and storage.
- 587. — Rental or lease of aircraft.
- 588. — Flight schools; training of aviators.
- 589. Questions of law or fact.
- 590. — In general.
- 591. — Operation of aircraft in general.
- 592. — Maintenance and operation of airports in general.
- 593. — Aids to navigation.
- 594. — Air traffic control.
- 595. — Aviation security.
- 596. — Repairs and maintenance of aircraft.
- 597. — Hangars, parking, and storage.
- 598. — Rental or lease of aircraft.
- 599. — Flight schools; training of aviators.
- 600. Instructions.
- 601. — In general.
- 602. — Operation of aircraft in general.
- 603. — Maintenance and operation of airports in general.
- 604. — Aids to navigation.
- 605. — Air traffic control.
- 606. — Aviation security.

**48B. AVIATION****V. CIVIL LIABILITY FOR INJURIES TO PERSONS OR PROPERTY.(Cont'd)**

- 607. — Repairs and maintenance of aircraft.
- 608. — Hangars, parking, and storage.
- 609. — Rental or lease of aircraft.
- 610. — Flight schools; training of aviators.
- 611. Verdict and findings.

**VI. NUISANCE AND TRESPASS.**

- 621. In general.
- 622. Operation of aircraft.
- 623. — In general.
- 624. — Flying over another's land.
- 625. Maintenance and operation of airports.
- 626. Obstructions and hazards.
- 627. Remedies.
- 628. — In general.
- 629. — Abatement and injunction.
- 630. — Damages in general.
- 631. — Punitive or exemplary damages.
- 632. Proceedings to obtain remedies.
- 633. — In general.
- 634. — Persons by or against whom proceedings may be brought; parties; standing.
  - (1). In general.
  - (2). Government entities and public employees; immunity.
- 635. — Pleading.
- 636. — Evidence.
- 637. — Trial.

**VII. PENALTIES.**

- 641. In general.
- 642. Proceedings to impose; evidence.
- 643. Review.

**VIII. CRIMINAL LIABILITY.**

- 651. In general.
- 652. Particular offenses.
- 653. — In general.
- 654. — Aircraft piracy; hijacking.
- 655. — Destruction of or interference with aircraft.
- 656. — Interference with flight crew members and attendants.
- 657. — Carrying weapon or explosive on aircraft.

**VIII. CRIMINAL LIABILITY.(Cont'd)**

- 658. — Offenses concerning airports, facilities, and services.
- 659. — False information and threats.
- 660. — Operating while impaired; intoxication.
- 661. Prosecutions.
- 662. — In general.
- 663. — Indictments and charging instruments.
- 664. — Evidence.
- 665. — Questions of law or fact.
- 666. — Instructions.
- 667. Sentencing and punishment.

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**49. BAIL****SUBJECTS INCLUDED**

Release of persons under arrest, in civil actions or on charges of crime, from such custody, on giving security to appear and answer

Right to be admitted to bail

Authority to take bail

Proceedings in giving and taking bail, and requisites and sufficiency of recognizances, bonds or undertakings or deposit of money in lieu of bail

Rights and liabilities of bail and their discharge or exoneration

Breach and forfeiture of recognizances, bonds, etc., and proceedings to enforce liabilities of bail

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Juvenile delinquency cases, see INFANTS

Officers' liabilities as bail, see SHERIFFS AND CONSTABLES

Recognizances and undertakings given to secure performance of acts not relating to release under arrest, see RECOGNIZANCES, UNDERTAKINGS and other specific topics

Release pending habeas corpus proceedings, see HABEAS CORPUS

**49. BAIL**

Review of decisions relating to bail, see AP-  
PEAL AND ERROR, CRIMINAL LAW,  
CERTIORARI, HABEAS CORPUS

**I. IN CIVIL ACTIONS, ¶1-38.****II. IN CRIMINAL PROSECUTIONS, ¶39-97.****I. IN CIVIL ACTIONS.**

1. Nature and scope of remedy.
2. Right to release without bail.
3. Right to release on bail.
4. Necessity of special bail and entry thereof.
5. Amount of bail.
6. — In general.
7. — Excessive bail.
8. — Increase or reduction.
9. Bond, undertaking, or recognizance.
- 9.1. — In general.
10. — Necessity and authority to take.
11. — Requisites and validity in general.
12. — Recitals.
13. — Conditions and obligations.
14. — Sureties.
15. — Approval and filing.
16. — Construction and operation.
17. Deposit in lieu of bail.
18. Discharge of sureties.
19. Breach or fulfillment of condition of bond, undertaking, or recognizance.
20. Extent of liability.
21. Proceedings for fixing liability or forfeiture.
22. Relief from liability or forfeiture.
23. — In general.
24. — Surrender of principal.
25. Action or scire facias on bond, undertaking, or recognizance.
- 25.1. — In general.
26. — Nature and form of remedy.
27. — Right of action.
28. — Defenses.
29. — Jurisdiction and venue.
30. — Time to sue, and limitations.
31. — Parties.
32. — Process and appearance.
33. — Pleading.
34. — Evidence.
35. — Damages.

**I. IN CIVIL ACTIONS.(Cont'd)**

36. — Trial.
37. — Judgment and enforcement thereof.
38. — Appeal and error.

**II. IN CRIMINAL PROSECUTIONS.**

39. Nature and scope of remedy.
40. Right to release without bail.
41. Right to release on bail.
42. — In general.
- 42.5. — Imposition of conditions in general.
43. — Bailable offenses.
44. — Pending appeal or other proceeding for review.
  - (1). In general; conditions.
  - (2). Nature of offense or proceedings.
  - (3). Grounds for grant or denial.
  - (3.1). — In general.
  - (4). — Substantiality of grounds for review; delay.
45. — After reversal on appeal or error.
46. Jurisdiction and authority to admit to bail.
- 46.1. — In general.
47. — Courts and judicial officers.
48. — Clerks, sheriffs, and other ministerial officers.
49. Proceedings to admit to bail.
  - (1). In general.
  - (2). Matters considered.
  - (3). Evidence.
  - (3.1). — In general.
  - (4). — Presumptions and burden of proof.
  - (5). Hearing and determination.
50. Amount of bail.
51. — In general.
52. — Excessive bail.
53. — Increase or reduction.
54. Bond, undertaking, or recognizance.
- 54.1. — In general.
55. — Requisites and validity in general.
56. — Defects in antecedent proceedings.
57. — Recitals in general.
58. — Description of offense.
59. — Conditions and obligations.
60. — Sureties.
61. — Approval and filing.

**49. BAIL****II. IN CRIMINAL PROSECUTIONS.(Cont'd)**

- 62. — Construction and operation.
- 63. Bond, undertaking, or recognizance on appeal or other proceeding for review.
  - 63.1. — In general.
- 64. — Requisites and validity in general.
- 65. — Recitals in general.
- 66. — Description of offense.
- 67. — Description of court.
- 68. — Conditions and obligations.
- 69. — Sureties.
- 70. — Approval and filing.
- 71. — Construction and operation.
- 72. — Amendments, and new or additional bonds.
  - 72.1. Deposit in lieu of bail.
  - 72.1. Revocation or modification of bail.
    - (1). In general.
    - (2). Hearing.
  - 74. Discharge of sureties.
    - (1). In general.
    - (2). Continuance or postponement of case.
  - 75. Breach or fulfillment of condition of bond, undertaking, or recognizance.
    - 75.1. — In general.
    - 75.2. — Appearance of principal.
      - (1). In general.
      - (2). After conviction.
      - (3). Excuses for non-appearance.
    - 75.3. — Liability and penalties for breach in general.
  - 76. Extent of liability.
  - 77. Proceedings for fixing liability or forfeiture.
    - (1). In general.
    - (2). Judgment or record of forfeiture.
  - 78. Relief from liability or forfeiture.
  - 79. — In general.
    - (1). In general.
    - (2). Application and proceedings for relief.
  - 80. — Surrender of principal.
  - 81. Action or scire facias on bond, undertaking, or recognizance.
    - 81.1. — In general.
  - 82. — Nature and form of remedy.
  - 83. — Right of action.
  - 84. — Defenses.

**II. IN CRIMINAL PROSECUTIONS.(Cont'd)**

- 85. — Jurisdiction and venue.
- 86. — Time to sue, and limitations.
- 87. — Parties.
- 88. — Process and appearance.
- 89. — Pleading.
  - (1). In general.
  - (2). Plea or answer, cross-complaint, and reply.
  - (3). Amendment.
- 90. — Evidence.
- 91. — Damages.
- 92. — Trial.
- 93. — Judgment and enforcement thereof.
- 94. — Appeal and error.
- 95. — Costs.
- 96. Disposition of proceeds.
- 97. Bail jumping as offense.
  - (1). In general.
  - (2). Prosecutions.
    - (2.1). — In general.
  - (3). — Evidence.
  - (4). — Trial.
  - (5). — Sentence and punishment.

**50. BAILMENT****SUBJECTS INCLUDED**

Contracts for transfer of possession of personal property without transfer of ownership in general

Rights, duties and liabilities of the parties, and remedies relating thereto

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Conditional sales, see SALES

Embezzlement or larceny by bailees, see EMBEZZLEMENT, LARCENY

Particular species of bailment, and bailments incident to particular occupations, see CARRIERS, DEPOSITS AND ESCROWS, FACTORS, INNKEEPERS, PLEDGES, SECURED TRANSAC-

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TIONS, WAREHOUSEMEN, and other specific topics

Automobiles, repair, storage, and parking, see AUTOMOBILES

1. Nature and elements in general.

*Bailment distinguished from sale, see SALES* ¶517.

2. Particular forms of bailment.

3. Validity in general.

4. Subject-matter.

5. Delivery and acceptance.

6. Title and rights to property.

7. — In general.

8. — Estoppel of bailee to deny title of bailor.

9. Condition of and defects in property, and negligence of bailor.

10. Care and use of property, and negligence of bailee.

11. — In general.

12. — Bailments for sole benefit of bailor.

13. — Bailments for sole benefit of bailee.

14. — Bailments for mutual benefit.

(1). In general.

(2). Care of goods delivered for manufacture.

(3). Care of property delivered for exhibition.

(4). Care of articles left by customers in stores or bathing establishments.

15. Performance of services by bailee.

16. Conversion by bailee.

17. Wrongful delivery by bailee.

18. Compensation and lien of bailee.

(.5). In general.

(1). Right to compensation.

(2). Lien in general.

(3). Possession of property.

(4). Waiver or loss of lien.

(5). Enforcement of lien.

19. Reimbursement and indemnity of bailee.

20. Compensation of bailor for use of property.

21. Rights and liabilities as to third persons.

22. Termination, rescission, and option to purchase property.

23. Redelivery of property.

24. Actions between bailor and bailee.

24.1. — In general.

25. — Nature and form.

26. — Conditions precedent.

27. — Defenses.

28. — Time to sue, and limitations.

*See also LIMITATION OF ACTIONS.*

29. — Parties.

30. — Pleading.

31. — Evidence.

(.5). In general.

(1). Presumptions and burden of proof.

(2). Admissibility.

(3). Sufficiency.

32. — Damages.

33. — Trial.

34. — Judgment and review.

35. Actions by or against third persons.

**51. BANKRUPTCY****SUBJECTS INCLUDED**

Administration of estates of debtors under general bankruptcy laws for the purpose of distribution of assets among creditors and discharge of debtors from liability for their debts

What constitutes bankruptcy

Nature, grounds, limits and subjects of jurisdiction in bankruptcy cases, and procedure therein

Relief of debtors and reorganization of corporations and others under federal statutes enacted pursuant to the bankruptcy power

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Abstention, see FEDERAL COURTS

Insolvency under local insolvent laws, see CREDITORS' REMEDIES ¶1183

Matters governed by state or local law, such as:

Exemptions, see EXEMPTIONS, HOMESTEAD

Fraudulent conveyances, see also FRAUDULENT CONVEYANCES

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Liens, see CHATTEL MORTGAGES, LIENS, MECHANICS' LIENS, MORTGAGES AND DEEDS OF TRUST, PLEDGES, SECURED TRANSACTIONS, etc.

Sales and transfers, see ASSIGNMENTS, SALES, REAL PROPERTY CONVEYANCES

- I. IN GENERAL, ¶2001–2120.
  - (A) IN GENERAL, ¶2001–2010.
  - (B) CONSTITUTIONAL AND STATUTORY PROVISIONS, ¶2011–2040.
  - (C) JURISDICTION, ¶2041–2091.
  - (D) PERSONAL JURISDICTION, ¶2092.1–2092.12.
  - (E) VENUE, ¶2093.1–2093.30.
    - 1. IN GENERAL; THE CASE, ¶2093.1–2093.15.
    - 2. ADVERSARY PROCEEDINGS AND CONTESTED MATTERS, ¶2093.16–2093.30.
  - (F) SUBSTANTIVE CONSOLIDATION OF CASES/ESTATES, ¶2094.1–2094.11.
  - (G) REMOVAL OF PROCEEDINGS, ¶2095.1–2100.
  - (H) REFERENCE, ¶2101–2120.
- II. COURTS; PROCEEDINGS IN GENERAL, ¶2121–2200.
  - (A) IN GENERAL, ¶2121–2150.
  - (B) ACTIONS AND PROCEEDINGS IN GENERAL, ¶2151–2180.
  - (C) COSTS AND FEES, ¶2181–2200.
- III. THE CASE, ¶2201–2360.
  - (A) IN GENERAL, ¶2201–2220.
  - (B) DEBTORS, ¶2221–2250.
  - (C) VOLUNTARY CASES, ¶2251–2280.
  - (D) INVOLUNTARY CASES, ¶2281–2310.
  - (E) JOINT CASES, ¶2311–2320.
  - (F) SCHEDULES AND STATEMENT OF AFFAIRS, ¶2321–2330.
  - (G) CONVERSION, ¶2331–2340.
  - (H) CASES ANCILLARY TO FOREIGN PROCEEDINGS, ¶2341–2360.
- IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION AND STAY, ¶2361–2490.
  - (A) IN GENERAL, ¶2361–2390.
  - (B) AUTOMATIC STAY, ¶2391–2420.
  - (C) RELIEF FROM STAY, ¶2421–2460.
  - (D) ENFORCEMENT OF INJUNCTION OR STAY, ¶2461–2480.
  - (E) PROTECTION OF UTILITY SERVICE, ¶2481–2490.
- V. THE ESTATE, ¶2491–2760.

- V. THE ESTATE—Cont'd
  - (A) IN GENERAL, ¶2491–2510.
  - (B) TITLE AND RIGHTS OF TRUSTEE OR DEBTOR IN POSSESSION, IN GENERAL, ¶2511–2530.
  - (C) PROPERTY OF ESTATE IN GENERAL, ¶2531–2570.
    - 1. IN GENERAL, ¶2531–2534.
    - 2. PARTICULAR ITEMS AND INTERESTS, ¶2535–2570.
  - (D) LIENS AND TRANSFERS; AVOIDABILITY, ¶2571–2600.
  - (E) PREFERENCES, ¶2601–2640.
  - (F) FRAUDULENT TRANSFERS, ¶2641–2670.
  - (G) SET-OFF, ¶2671–2700.
  - (H) AVOIDANCE RIGHTS, ¶2701–2740.
    - 1. IN GENERAL, ¶2701–2720.
    - 2. PROCEEDINGS, ¶2721–2740.
  - (I) RECLAMATION, ¶2741–2760.
- VI. EXEMPTIONS, ¶2761–2820.
- VII. CLAIMS, ¶2821–3000.
  - (A) IN GENERAL, ¶2821–2850.
  - (B) SECURED CLAIMS, ¶2851–2870.
  - (C) ADMINISTRATIVE CLAIMS, ¶2871–2890.
  - (D) PROOF; FILING, ¶2891–2920.
  - (E) DETERMINATION, ¶2921–2950.
  - (F) PRIORITIES, ¶2951–3000.
- VIII. TRUSTEES, ¶3001–3020.
- IX. ADMINISTRATION, ¶3021–3250.
  - (A) IN GENERAL, ¶3021–3060.
  - (B) POSSESSION, USE, SALE, OR LEASE OF ASSETS, ¶3061–3100.
  - (C) DEBTOR'S CONTRACTS AND LEASES, ¶3101–3130.
  - (D) ABANDONMENT, ¶3131–3150.
  - (E) COMPENSATION OF OFFICERS AND OTHERS, ¶3151–3250.
    - 1. IN GENERAL, ¶3151–3154.
    - 2. PROFESSIONAL PERSONS IN GENERAL, ¶3155–3169.
    - 3. ATTORNEYS, ¶3170–3250.
- X. DISCHARGE, ¶3251–3440.
  - (A) IN GENERAL, ¶3251–3270.
  - (B) DISCHARGEABLE DEBTORS, ¶3271–3340.
    - 1. IN GENERAL, ¶3271–3310.
    - 2. DETERMINATION OF DISCHARGEABILITY, ¶3311–3340.
  - (C) DEBTS AND LIABILITIES DISCHARGED, ¶3341–3394.
    - 1. IN GENERAL, ¶3341–3362.
    - 2. DEBTS ARISING FROM DIVORCE OR SEPARATION, ¶3363–3368.

**51. BANKRUPTCY****X. DISCHARGE—Cont'd****(C) DEBTS AND LIABILITIES DISCHARGED—Cont'd**

3. EDUCATIONAL LOANS, §3369–3371.
4. FRAUD, §3372.1–3372.44.
5. TORTS AND CRIMES, §3373–3394.

**(D) DETERMINATION OF DISCHARGEABILITY, §3395–3410.****(E) EFFECT OF DISCHARGE, §3411–3440.****XI. LIQUIDATION, DISTRIBUTION, AND CLOSING, §3441–3460.****XII. BROKER AND CLEARING BANK LIQUIDATION, §3461–3480.****XIII. ADJUSTMENT OF DEBTS OF A MUNICIPALITY, §3481–3500.****XIV. REORGANIZATION, §3501–3660.****(A) IN GENERAL, §3501–3530.****(B) THE PLAN, §3531–3590.****(C) CONVERSION OR DISMISSAL, §3591–3620.****(D) ADMINISTRATION, §3621–3650.****(E) RAILROAD REORGANIZATION, §3651–3660.****XV. ARRANGEMENTS, §3661.100–3661.999.****(A) IN GENERAL, §3661.100–3661.110.****(B) REAL PROPERTY ARRANGEMENTS, §3661.111–3661.999.****XVI. COMPOSITIONS, §3662.100–3670.****XVII. ADJUSTMENT OF DEBTS OF FAMILY FARMER, §3671–3700.****(A) IN GENERAL, §3671–3680.****(B) THE PLAN, §3681–3700.****XVIII. INDIVIDUAL DEBT ADJUSTMENT, §3701–3740.****XIX. REVIEW, §3741–3860.****(A) IN GENERAL, §3741–3760.****(B) REVIEW OF BANKRUPTCY COURT, §3761–3810.****(C) REVIEW OF APPELLATE PANEL, §3811–3830.****(D) REVIEW OF DISTRICT COURT, §3831–3860.****XX. OFFENSES, §3861–3863.****I. IN GENERAL.****(A) IN GENERAL.**

2001. In general.

2002. Application of state or federal law in general.

**(B) CONSTITUTIONAL AND STATUTORY PROVISIONS.**

2011. In general.

**I. IN GENERAL.(Cont'd)**

2012. Bankruptcy power generally.

2013. Validity of bankruptcy laws.

2013.1. — In general.

2014. — Uniformity requirement.

2015. — Impairment of contracts generally.

2016. — Jurisdictional provisions; courts and judges.

2017. — The estate; claims; liens.

2018. — Exemptions; discharge.

2019. — Reorganization.

2020. — Debt adjustment.

2021. Construction and operation.

2021.1. — In general.

2022. — Purpose.

2023. Retrospective operation.

2024. Validity of retrospective operation.

2024.1. — In general.

2025. — Lien avoidance provisions.

2026. Repeal.

**(C) JURISDICTION.**

2041. Bankruptcy jurisdiction.

2041.1. — In general.

2041.5. — Limited, in personam, and in rem jurisdiction.

2041.10. — Cases or proceedings.

2041.15. — Transfer; transition period.

2041.20. — Emergency rule; local rules.

2042. District court jurisdiction in general.

2043. Core, non-core, or related proceedings in general; nexus.

(1). In general.

(2). Core or non-core proceedings.

(3). Related proceedings.

2044. Summary jurisdiction in general.

2045. Particular proceedings or issues.

2046. Jurisdiction over property.

2047. Administration of estate.

2048. Actions or proceedings by trustee or debtor.

2048.1. — In general.

2048.2. — Core or related proceedings.

2048.3. — Injunction.

2048.4. — Counterclaims.

2048.5. — Stay enforcement.

2049. — State law claims.

2050. — Turnover proceedings.



**51. BANKRUPTCY****I. IN GENERAL.**(Cont'd)

- 2051. — Recovery of preferences or fraudulent conveyances.
- 2052. Claims or proceedings against estate or debtor; relief from stay.
- 2053. Issues between non-debtors.
- 2054. Domestic relations issues.
- 2055. Tax controversies.
- 2056. Pendent or ancillary jurisdiction.
- 2057. Effect of dismissal or closing of case.
- 2058. Consent to or waiver of objections to jurisdiction or venue.
- 2058.1. — In general.
- 2059. — Assertion of claim against estate.
- 2060. Exclusive, conflicting, or concurrent jurisdiction.
- 2060.1. — In general.
- 2061. — Bankruptcy courts and other federal courts.
- 2062. — Bankruptcy courts and state courts.
- 2063. Determination of jurisdictional questions.

**(D) PERSONAL JURISDICTION.**

- 2092.1. In general.
- 2092.2. Notice and service of pleadings.
- 2092.3. Particular determinations.
- 2092.4. Nonresidents, proceedings and actions against.
- 2092.5. — In general.
- 2092.6. — Particular cases.
- 2092.7. — Foreign countries, corporations, business entities, and citizens.
  - (1). In general.
  - (2). Particular cases.
- 2092.8. Evidence.
- 2092.9. — In general.
- 2092.10. — Presumptions and burden of proof.
- 2092.11. — Weight and sufficiency.
- 2092.12. Other procedural issues.

**(E) VENUE.****1. IN GENERAL; THE CASE.**

- 2093.1. In general.
- 2093.2. Factors and grounds considered in general.
- 2093.3. Particular cases.

**I. IN GENERAL.**(Cont'd)

- 2093.4. Evidence.
- 2093.5. — In general.
- 2093.6. — Presumptions and burden of proof.
- 2093.7. — Weight and sufficiency.
- 2093.8. Other procedural issues.
- 2093.9. Change or transfer of venue.
- 2093.10. — In general.
- 2093.11. — Discretion.
- 2093.12. — Factors, grounds, and objections in general.
- 2093.13. — Particular cases.
  - (1). In general.
  - (2). Chapter 11 cases.
- 2093.14. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Weight and sufficiency.
- 2093.15. — Other procedural issues.

**2. ADVERSARY PROCEEDINGS AND CONTESTED MATTERS.**

- 2093.16. In general.
- 2093.17. Factors and grounds considered.
- 2093.18. Particular determinations.
- 2093.19. Evidence.
- 2093.20. — In general.
- 2093.21. — Presumptions and burden of proof.
- 2093.22. — Weight and sufficiency.
- 2093.23. Other procedural issues.
- 2093.24. Change or transfer of venue.
- 2093.25. — In general.
- 2093.26. — Discretion.
- 2093.27. — Factors and grounds considered.
  - (1). In general.
  - (2). Plaintiff's choice of forum.
  - (3). Convenience, fairness, and interest of justice.
- 2093.28. — Particular determinations.
- 2093.29. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Weight and sufficiency.
- 2093.30. — Other procedural issues.

**51. BANKRUPTCY****(F) SUBSTANTIVE CONSOLIDATION  
OF CASES/ESTATES.**

- 2094.1. In general; effect of substantive consolidation.
- 2094.2. Discretion.
- 2094.3. Factors, grounds, and objections.
- 2094.4. Particular cases and contexts.
- 2094.5. — In general.
- 2094.6. — Chapter 11 cases.
- 2094.7. Evidence.
- 2094.8. — In general.
- 2094.9. — Presumptions and burden of proof.
- 2094.10. — Weight and sufficiency.
- 2094.11. Other procedural issues.

**(G) REMOVAL OF PROCEEDINGS.**

- 2095.1. In general.
- 2095.2. Removable proceedings.
- 2095.3. — In general.
- 2095.4. — Discretion.
- 2095.5. — Removal from state courts.
- 2095.6. — Removal from federal courts.
- 2095.7. Relation to bankruptcy case and related to jurisdiction in general.
- 2095.8. Proceedings for removal or remand.
- 2095.9. — In general.
- 2095.10. — Time.
- 2095.11. — Consent; standing to seek or object to removal or remand.
- 2095.12. — Sua sponte authority of court.
- 2095.13. — Evidence.
- 2095.14. — Determination.
  - (1). In general.
  - (2). Remand to state court.
  - (3). Remand to federal court.
  - (4). Dismissal.
- 2095.15. Proceedings following removal.
- 2095.16. — In general.
- 2095.17. — Effect in removed proceedings of pre-removal rulings and conduct.
- 2095.18. Review of remand orders.

**(H) REFERENCE.**

- 2101. In general.
- 2102. Issues referable; automatic reference.
- 2103. Withdrawal or transfer to district court.

**I. IN GENERAL.(Cont'd)**

- 2104. Submission to district court for judgment.
- 2105. District court review or decision.

**II. COURTS; PROCEEDINGS IN GENERAL.****(A) IN GENERAL.**

- 2121. In general.
- 2122. Creation, nature and status.
- 2123. Bankruptcy judges.
- 2124. Power and authority.
- 2124.1. — In general.
- 2125. — Equitable powers and principles.
- 2126. — Carrying out provisions of Code.
- 2127. Procedure.
- 2127.1. — In general.
- 2128. — Filing fees.
- 2129. — Rules.
- 2130. — Jury trial, authority and discretion to conduct.
- 2131. — Notice.
- 2132. — Extension of time.
- 2133. — Orders.
- 2134. Contempt.
 

*Includes most cases, but excludes cases appropriate for*  
*§ 2465, 2466, and 3046(2), below.*

**(B) ACTIONS AND PROCEEDINGS IN GENERAL.**

- 2151. In general.
- 2152. Rights of action against trustee or debtor.
- 2152.1. — In general.
- 2153. — Leave to sue.
- 2154. Rights of action by or on behalf of trustee or debtor.
 

*Excludes avoidance actions, see § 2701 et seq., below,*  
*and turnover proceedings, see § 3066, below.*
- 2154.1. — In general; standing.
- 2155. — Leave to sue.
- 2156. Nature and form; adversary proceedings.
- 2157. Limitations and time to sue; computation.
 

*Includes all cases except for limitations on avoidance rights, see § 2722, below.*
- 2158. Process; service.
- 2159. Parties.
- 2159.1. — In general.
- 2160. — Intervention.
 

*Includes all cases excepting intervention by the Securities and Exchange Commission, see § 2206, below, and*

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*intervention to cure a deficiency in petitioning creditors, see ¶2289, below.*

- 2161. — Third party practice.
- 2162. Pleading; dismissal.
- 2163. Evidence; witnesses.
- 2164. Judgment or order.
- 2164.1. — In general.
- 2165. — Default.

**(C) COSTS AND FEES.**

*Excludes compensation of officers and professional persons, see IX(E) below, allowances to secured parties authorized by agreement, see ¶2853 below, administrative claims, see ¶2877 below, and expenses of preserving security, see ¶2854, below.*

- 2181. In general.
- 2182. Grounds and circumstances.
- 2182.1. — In general.
- 2183. — Prevailing party.
- 2184. — Dismissal.
- 2185. — Dischargeability determinations; consumer debt issues.
- 2187. — Frivolity or bad faith; sanctions.
- 2188. Items and amount.
- 2189. Costs on appeal.
- 2190. In forma pauperis proceedings.
- 2191. Taxation.

**III. THE CASE.****(A) IN GENERAL.**

- 2201. In general.
- 2202. Commencement.
- 2203. Types of cases.
- 2204. Parties.
- 2204.1. — In general.
- 2205. — Reorganization cases; right to be heard.
- 2206. — Securities and Exchange Commission.

**(B) DEBTORS.**

- 2221. In general.
- 2222. Who may be a debtor.
- 2222.1. — In general.
- 2223. — Reorganization cases.
- 2224. — Corporations.
- 2225. — Insurance corporations.
- 2226. — Financial institutions.
- 2227. — Partners and partnerships.
- 2228. — Estates and trusts.
- 2229. — Farmers.

**III. THE CASE.(Cont'd)**

- 2230. — Eleemosynary institutions.
- 2231. — Brokers.
- 2232. — Municipalities.
- 2233. — Individual debt adjustment cases.
  - (1). In general.
  - (2). Regular income.
  - (3). Amount of indebtedness.

2234. Insolvency; current payment of debts.

2235. Simultaneous or successive proceedings.

*Excludes right to discharge in successive proceedings, see ¶3275, below.*

2236. Evidence and fact questions.

**(C) VOLUNTARY CASES.**

- 2251. In general.
- 2252. Good faith; motive.
- 2252.1. — In general.
- 2253. — Abuse of bankruptcy process.
- 2254. — Consumer debt abuse.
- 2255. Who may institute case.
- 2255.1. — In general.
- 2256. — Representatives of corporations.
- 2257. Petition.
- 2258. Objections and determination thereof.
- 2259. Dismissal.
- 2259.1. — In general.
- 2260. — Voluntary dismissal in general.
- 2261. — Cause in general.
 

*Excludes bad faith, etc., existing at time of petition.*
- 2262. — Intention to refile.
- 2263. — Want of prosecution.
- 2264. — Proceedings; motion or sua sponte action.
  - (1). In general.
  - (2). Standing.
  - (3). Order; prejudice.

**(D) INVOLUNTARY CASES.**

- 2281. In general.
- 2282. Availability or exhaustion of other remedies.
- 2283. Petitioning creditors and their claims.
- 2283.1. — In general.
- 2284. — Bad faith; collusion.
- 2285. Number of creditors and amount of claims.
- 2285.1. — In general.
- 2286. — Undisputed or contingent claims.

**51. BANKRUPTCY****III. THE CASE.**(Cont'd)

- 2287. — Secured creditors.
- 2288. — Effect of payment by debtor; preferred creditors.
- 2289. — Intervention curing deficiency.
- 2290. Petition.
- 2290.1. — In general.
- 2291. — Verification.
- 2292. — Amendment.
- 2293. Bond.
- 2294. Objections; answer.
- 2295. Determination of issues; dismissal.  
*Excludes grounds for dismissal existing at time of petition, and grounds peculiar to reorganization or debt adjustment cases, see §3591 et seq., 3716, 3717, below.*
- 2295.1. — In general.
- 2296. — Evidence and fact questions.
- 2297. Order for relief.

**(E) JOINT CASES.**

- 2311. In general.

**(F) SCHEDULES AND STATEMENT OF AFFAIRS.**

- 2321. In general.
- 2322. Requisites in general.
- 2322.5. Income and expenditures.
- 2323. Property.
- 2324. Creditors.
- 2325. Amendment.

**(G) CONVERSION.**

- 2331. Conversion to reorganization.
- 2332. Conversion to debt adjustment.

**(H) CASES ANCILLARY TO FOREIGN PROCEEDINGS.**

- 2341. In general.

**IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION AND STAY.****(A) IN GENERAL.**

- 2361. In general.
- 2362. Stay of redemption period.
- 2363. Protection against discrimination or collection efforts in general; “fresh start.”.
- 2363.1. — In general.
- 2364. — Discharge as injunction.
- 2365. — Set-off.
- 2366. — Lien enforcement.

**IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION AND STAY.**(Cont'd)

- 2367. — Injunction or stay of other proceedings.
  - 2368. — Judicial proceedings in general.
  - 2369. — State court proceedings.
  - 2370. — Criminal prosecutions.
  - 2371. — Administrative proceedings and governmental actions.
    - (1). In general.
    - (2). Tax proceedings.
    - (3). Licenses and permits.
  - 2372. — Student loans and transcripts, proceedings involving.
  - 2373. — Contracts, grant or renewal.
  - 2374. — Preliminary injunctions and restraining orders.
- (B) AUTOMATIC STAY.**
- 2391. In general.
  - 2392. Property and claims subject to stay.
  - 2393. Notice to creditors; commencement.
  - 2394. Proceedings, acts, or persons affected.
  - 2394.1. — In general.
  - 2395. — Judicial proceedings in general.
  - 2396. — Co-debtors and third persons.
  - 2397. — Mortgages or liens.
    - (1). In general.
    - (1.5). Acts excepted from stay.
    - (2). Foreclosure proceedings.
    - (3). Redemption period.
  - 2398. — Landlord and tenant, proceedings.
  - 2399. — Set-offs and counterclaims; cross claims.
  - 2400. — Repossession.
  - 2401. — Domestic relations claims and proceedings.
  - 2402. — Administrative proceedings and governmental action.
    - (1). In general.
    - (2). Labor and employment matters.
      - (2.1). — In general.
      - (2.5). — Unfair labor practice proceedings.
      - (2.10). — Discrimination proceedings.
      - (2.15). — Workers’ compensation proceedings.

**51. BANKRUPTCY****IV. EFFECT OF BANKRUPTCY RELIEF;  
INJUNCTION AND STAY.(Cont'd)**

- (2.20). — Pension or benefit proceedings.
  - (2.25). — Fair labor standards or wage claim proceedings.
  - (2.30). — Unemployment compensation proceedings.
  - (3). Environmental matters.
  - (4). Taxation and licenses.
  - (5). Criminal prosecutions.
  - (6). Forfeiture.
  - (7). Contempt.
  - 2403. — Student loans and transcripts.
  - 2404. Duration and termination.
- (C) RELIEF FROM STAY.**
- 2421. Vacation, continuance, modification, or dissolution in general.
  - 2422. Cause; grounds and objections.
  - 2422.5. — In general.
    - (1). In general.
    - (2). Balancing hardships.
    - (3). Secured and unsecured creditors; secured and contingent claims.
    - (4). Particular cases.
      - (4.1). — In general.
      - (5). — Mortgages; foreclosure.
      - (6). — Landlord and tenant; leases.
      - (7). — Domestic relations.
      - (8). — Employment.
      - (9). — Sales; franchises.
      - (10). — Environmental matters.
  - 2423. — Debtor's default.
  - 2424. — Debtor's want of interest or equity.
  - 2425. — Individual debt adjustment cases.
  - 2426. — Fraud, bad faith, or misconduct.
  - 2427. — Unlikelihood of reorganization; lack of plan.
  - 2428. — Claims of nondischargeability.
  - 2429. — Necessity of asset for reorganization or rehabilitation.
    - (1). In general.
    - (2). Particular assets.
    - (3). Real property.
  - 2430. Adequate protection.
    - 2430.1. — In general.
    - 2430.2. — Effect of presence or absence.

**IV. EFFECT OF BANKRUPTCY RELIEF;  
INJUNCTION AND STAY.(Cont'd)**

- 2430.5. — Particular creditors or claimants.
    - (1). In general.
    - (2). Mortgagees.
    - (3). Lessors.
  - 2430.10. — Claims and interests protected.
    - (1). In general.
    - (2). Unsecured or undersecured claims.
    - (3). Time element; rights as of filing date.
    - (4). Damages; lost opportunity; interest.
  - 2431. — What constitutes, in general.
  - 2432. — Equity cushion.
  - 2433. — Periodic payments.
  - 2434. — Indubitable equivalent; replacement lien.
  - 2435. Proceedings.
    - 2435.1. — In general.
  - 2436. — Set-off and counterclaim; affirmative defenses.
  - 2437. — Time; notice.
  - 2438. — Parties; standing.
  - 2439. — Evidence.
    - (1). In general.
    - (2). Presumptions and burden of proof.
    - (3). Creditor's or movant's burden.
      - (3.1). — In general.
    - (4). — Lack of equity.
    - (5). Debtor's or trustee's burden.
      - (5.1). — In general.
    - (6). — Adequate protection.
    - (7). — Necessity for reorganization or rehabilitation.
  - 2440. — Hearing.
  - 2441. — Discretion.
  - 2442. — Determination and relief; conditions.
  - 2443. Reinstatement; modification of order of relief.
- (D) ENFORCEMENT OF INJUNCTION OR STAY.**
- 2461. In general.
  - 2462. Validity of acts in violation of injunction or stay.
  - 2463. Injunction against violation of stay.

**51. BANKRUPTCY****IV. EFFECT OF BANKRUPTCY RELIEF;  
INJUNCTION AND STAY.(Cont'd)**

- 2464. Sanctions, in general.
- 2465. Contempt.
- 2465.1. — In general.
- 2465.2. — Knowledge, intent, and good faith.
- 2465.3. — Proceedings.
- 2466. — Violation of discharge order.
- 2467. Damages and attorney fees.
- 2468. Exemplary or punitive damages; fines.

**(E) PROTECTION OF UTILITY SERVICE.**

- 2481. In general; adequate assurance or protection.
- 2482. Proceedings; injunction.

**V. THE ESTATE.****(A) IN GENERAL.**

- 2491. In general.
- 2492. Creation of estate; time.

**(B) TITLE AND RIGHTS OF TRUSTEE OR DEBTOR  
IN POSSESSION, IN GENERAL.**

- 2511. In general.
- 2512. "Strong arm" rights generally.
- 2513. Effect of state law.
- 2514. Rights as lien holder.
- 2515. Rights as bona fide purchaser of realty.
- 2516. Rights as unsecured creditor.

**(C) PROPERTY OF ESTATE IN GENERAL.****1. IN GENERAL.**

- 2531. In general.
- 2532. Interest of debtor in general.
- 2533. Legal or equitable interests in general.
- 2534. Effect of state law in general.

**2. PARTICULAR ITEMS AND INTERESTS.**

- 2535. In general.
  - (1). In general.
  - (2). Tangible personalty in general.
  - (3). Deposits and securities; bonds.
  - (4). Realty in general.
  - (5). Property subject of sale or transfer.
  - (6). Social security benefits.
- 2536. Letters of credit.
- 2537. Exempt or fresh start property.

**V. THE ESTATE.(Cont'd)**

- 2538. Mortgages.
- 2539. Future interests.
- 2540. Preferences and fraudulent conveyances; avoided transfers.
- 2541. Leases.
- 2542. Property acquired by fraud.
- 2543. Property held by debtor as trustee, agent, or bailee.
- 2544. Licenses and permits.
- 2545. Property pledged or encumbered; redemption rights.
- 2546. Interests in joint, entireties, or community property.
- 2547. Property held in trust or custody for debtor; deposits.
- 2548. Accrued rights under employment contracts; pension funds.
- 2549. Insurance policies and liabilities thereon.
- 2550. Tax refunds, credits, and deductions.
- 2551. Property in custody of law.
- 2552. Rights of action; contract rights generally.
- 2553. — In general.
- 2554. — Rights under contracts.
- 2555. — Consumer credit claims.
- 2556. — Tort claims.
- 2557. Property omitted from schedules.
- 2558. After-acquired property; proceeds; wages and earnings.
- 2559. Partnership and individual property.

**(D) LIENS AND TRANSFERS; AVOIDABILITY.**

*Includes reservation of title, lien, or security interest on transfer to debtor.*

- 2571. In general.
- 2572. Liens and security interests in general.
- 2573. Post-petition effect.
- 2574. Effect of state law, in general.
- 2575. Liens securing claims not allowed.
- 2576. Perfection or recordation under state law, in general.
- 2576.5. Security interests in general.
  - (1). In general.
  - (2). Particular cases and problems.
  - (3). Filing or recording; financing statement.
  - (3.1). — In general.
  - (4). — Place and time.

**51. BANKRUPTCY****V. THE ESTATE.(Cont'd)**

- 2577. Post-petition perfection.
- 2578. Mortgages and pledges.
- 2579. Motor vehicle transactions.
- 2580. Statutory liens.
- 2580.1. — In general.
- 2581. — Rent or distress.
- 2582. — Taxes.
- 2583. Mechanics' or laborers' liens.
- 2584. Judicial liens; attachment and garnishment.
- 2585. Attorneys' liens.
- 2586. Knowledge of or notice to trustee, debtor, or creditor.
- 2586.1. — In general.
- 2587. — Constructive notice.
- 2588. Post-petition transactions.

**(E) PREFERENCES.**

- 2601. In general.
- 2602. Nature of transfer.
- 2602.1. — In general.
- 2603. — Creation of lien or security interest.
- 2604. — Judicial liens; garnishment, attachment, or execution.
- 2605. — Statutory liens.
- 2606. Elements and exceptions.
- 2606.1. — In general.
- 2607. — Insolvency.
- 2608. — Time of transfer.
  - (1). In general.
  - (2). Insider transferees; reasonable cause to believe debtor insolvent.
- 2609. — Effect to give more than under bankruptcy distribution.
- 2610. — Ownership of interest transferred.
- 2611. — Third-party transfers.
- 2612. — Antecedent debt or contemporaneous consideration.
- 2613. — New value.
  - (1). In general.
  - (2). Particular cases.
  - (3). Contemporaneous character; time element.
  - (4). Subsequent advances; net result rule.
  - (5). Forbearance; release of lien.

**V. THE ESTATE.(Cont'd)**

- 2614. — Purchase money security interests; enabling loans.
- 2615. — Inventory and receivables security interests.
- 2616. — Transfers in ordinary course of business.
  - (1). In general.
  - (2). Time limits for payment; late payment.
  - (3). Date debt was incurred.
  - (4). Normal payment; credit or business transactions; settlement or agreement.
  - (5). Repayment of loans in general.
  - (6). Installment loans; running, credit card, or open accounts.
  - (7). Interest payments.
  - (8). Leases; rent.
  - (9). Return of goods to supplier.
- 2617. — Transfers to secured creditors; lien enforcement.
- 2618. — Consumer debt transfers.
- 2619. When transfer occurs.
- 2619.1. — In general.
- 2620. — Checks or drafts.
- 2621. Preference of partnership or individual creditors.
- 2622. Set-off.
- 2623. Payments to attorneys.

**(F) FRAUDULENT TRANSFERS.**

- 2641. Fraudulent conveyances in general.
- 2642. Effect of state laws in general.
- 2643. Insolvency of debtor.
- 2644. Time of making transfer.
- 2645. Nature and form of transfer.
- 2645.1. — In general.
- 2646. — Payments by debtor.
- 2647. — Bulk transfers.
- 2648. Property or rights transferred.
- 2649. Intent of debtor.
- 2650. Consideration.
  - (1). In general.
  - (2). "Reasonably equivalent value" in general.
  - (3). Release or forbearance; antecedent obligation.
  - (4). Price at foreclosure, judicial, or trustee sale.

**51. BANKRUPTCY****V. THE ESTATE.(Cont'd)**

- (5). Future or indirect benefit; benefit to third party.

2651. Transfer fraudulent as to partnership or individual creditors.

**(G) SET-OFF.**

2671. Set-off or recoupment in general.

2672. Necessity for court approval; discretion.

2673. Set-off against claim.

2674. Mutuality; identity of right, person, and capacity.

2675. Prepetition, post-petition, and unmatured debts.

2676. Disqualifying or limiting factors; assignment.

2677. Security deposits.

2678. Bank set-off.

*See also FINANCE, BANKING, AND CREDIT*  
 Ⓒ688.

2679. Governmental claims; immunity waiver.

2680. Proceedings.

**(H) AVOIDANCE RIGHTS.****1. IN GENERAL.**

2701. Avoidance rights and limits thereon, in general.

2702. Rights of debtor or injured creditors.

2702.1. — In general.

2703. — Debtor in possession.

2704. Trustee as representative of debtor or creditors.

2705. Bona fide purchasers and rights thereof.

2706. Preservation of lien for benefit of estate.

**2. PROCEEDINGS.**

2721. In general.

2722. Time limitations; computation.

2723. Parties.

*Excludes standing, see Ⓒ2701–2705 above, and intervention and third-party practice, see Ⓒ2160, 2161, above.*

2724. Pleading.

2725. Evidence.

2725.1. — In general.

2726. — Presumptions.

(1). In general.

**V. THE ESTATE.(Cont'd)**

(2). Insolvency.

(3). Preferences.

(4). Fraudulent transfers.

2726.1. — Burden of proof.

(1). In general.

(2). Preferences.

(3). Fraudulent transfers.

2727. — Weight and sufficiency.

(1). In general.

(2). Preferences.

(3). Fraudulent transfers.

2728. Trial.

2729. Judgment or order; relief.

**(I) RECLAMATION.**

2741. Right to recover property from estate, in general.

2742. Seller's reclamation rights.

*See also SALES Ⓒ1951–1960.*

2743. Demand.

2744. Proceedings.

2744.1. — In general.

2745. — Evidence and fact questions.

**VI. EXEMPTIONS.**

*Excludes construction of state exemption laws, see EXEMPTIONS, HOMESTEAD.*

2761. In general.

2762. Effect of state law.

2762.1. — In general.

2763. — Joint debtor's election.

2764. — Validity and effect of opt-out legislation.

2765. — Lien avoidance.

2766. Date of determination.

2767. Who may claim.

2767.1. — In general.

2768. — Dependents.

2769. — Co-debtors; stacking.

2770. Partnership and individual property.

2771. Property exempt.

2771.1. — In general.

2772. — Valuation, in general.

2773. — Entireties property.

2774. — Homestead; residence.

2775. — Household or personal goods.

2776. — Tools of trade.

2777. — Motor vehicles.

2778. — Farm equipment.



**51. BANKRUPTCY****VI. EXEMPTIONS.**(Cont'd)

- 2779. — Pensions or benefits.
- 2780. — Life insurance.
- 2781. — Awards or amounts due on judgments.
- 2782. — Avoided transfers.
- 2783. “In lieu,” “wild card,” or “spill-over” exemption.
- 2784. Lien avoidance.
- 2784.1. — In general.
- 2784.2. — Purpose.
- 2784.3. — Property and exemptions affected; debtor’s interest.
- 2784.4. — Liens avoidable.
- (1). In general.
- (2). Consensual liens; mortgages.
- 2784.5. — Debt adjustment cases; application to.
- 2785. — Judicial liens.
- 2786. — Lien under dissolution decree or separation agreement.
- 2787. — Non-possessory, non-purchase money security interests.
- 2788. — Household or personal goods.
- 2789. — Tools of trade.
- 2790. — Motor vehicles.
- 2791. — Farm equipment.
- 2792. — Homestead; residence.
- 2793. Operation and effect.
- 2794. Claim of exemption or lien avoidance.
- 2794.1. — In general.
- 2795. — Timeliness.
- 2796. — Amendment.
- 2797. Waiver or loss of exemption.
- 2797.1. — In general.
- 2798. — Preference, fraudulent transfer, or concealment.
- 2799. Objections.
- 2799.1. — In general.
- 2800. — Who may object.
- 2801. — Time.
- 2802. — Proceedings.

**VII. CLAIMS.****(A) IN GENERAL.**

- 2821. In general.
- 2822. Creditors entitled to assert claims.
- 2822.1. — In general.
- 2823. — Co-debtors; subrogation.

**VII. CLAIMS.**(Cont'd)

- 2824. — Effect of avoidable transfer and surrender thereof.
- 2825. Claims allowable; what constitutes “claim.”.
- 2826. Effect of state law, in general.
- 2827. Claims by insiders and by attorneys in excess of value.
- 2828. Contingent or unliquidated claims.
- 2828.1. — In general.
- 2829. — Estimation of value.
- 2830. Tax claims.
- 2830.5. Environmental claims.
- 2831. Penalties, forfeitures, and punitive damages.
- 2832. Post-petition claims.
- 2832.1. — In general.
- 2833. — “Gap” creditors.
- 2834. — Rejection of executory contract or lease.
- 2835. Interest.
- Excludes rate and computation, see INTEREST.*
- 2835.1. — In general.
- 2836. — Post-petition interest.
- 2837. Payment; interim awards.

**(B) SECURED CLAIMS.**

- 2851. In general.
- 2852. Amount secured; partial security.
- 2853. Oversecurity.
- 2853.10. — In general.
- 2853.20. — Fees, costs, or charges; attorney fees.
- (1). In general.
- (2). Reasonableness, necessity or utility of services.
- (3). Contract provisions, necessity and effect.
- (4). Amount; reasonableness thereof.
- (5). Delinquency or late charges; penalties.
- (6). Taxation; documentation requirements.
- 2853.30. — Interest.
- 2853.40. — Nonconsensual or statutory liens; tax liens.
- 2853.50. — Subordination; priority.
- 2853.60. — Value of claim or collateral; time of valuation.
- 2853.70. — Effect of state law.

**51. BANKRUPTCY****VII. CLAIMS.(Cont'd)**

2854. Liability of security for expense of preservation or disposition.
- (1). In general.
  - (2). Benefit to creditor, in general.
  - (3). Particular cases and problems.
  - (3.1). — In general.
  - (4). — Expense of sale or disposition.
  - (5). — Farm expenses.
  - (6). — Attorney fees.
  - (7). — Creditor's consent; expenses caused by creditor.
  - (8). Proceedings and determination; persons entitled.
2855. Waiver, estoppel, forfeiture, or other loss of security.

**(C) ADMINISTRATIVE CLAIMS.**

2871. Administrative expenses in general.
2872. Reorganization cases.
2873. Time of accrual; prepetition claims.
2874. Governmental claims; taxes, etc.
2875. Wage and pension fund claims.
2876. Use and occupancy claims; administrative rent.
- 2876.5. Environmental claims.
2877. Professional services; attorney fees.  
*Includes treatment as administrative expense but excludes right to compensation, see IX(E), below.*
2878. Expenses in opposing discharge.  
*See §2185, above, for allowance of costs in proceedings opposing discharge.*
2879. Necessity for court approval.

**(D) PROOF; FILING.**

2891. In general.
2892. Necessity of filing; effect of failure.
- 2892.1. — In general.
2893. — Administrative claims; request for payment.
2894. — Secured claims.
2895. Who may file.
- 2895.1. — In general.
2896. — Trustee or debtor.
2897. Time for filing.
- 2897.1. — In general.
2898. — Filing by trustee or debtor.
2899. — Reorganization and municipal debt cases.

**VII. CLAIMS.(Cont'd)**

2900. — Extension of time; excuse for delay.
- (1). In general.
  - (2). Lack or insufficiency of notice.
2901. Sufficiency of filing.
- 2901.1. — In general.
2902. — Informal proof.
2903. Amendment or withdrawal.  
*Excludes what constitutes an amendable claim, see §2901, above.*
2904. Transfer or assignment.

**(E) DETERMINATION.**

2921. In general.
2922. Summary allowance; necessity for objection.
2923. Objections generally; time, form, and sufficiency; pleading.
2924. Waiver of objections.
2925. Evidence.
- 2925.1. — In general.
2926. — Presumptions and burden of proof.
2927. — Weight and sufficiency.
2928. — Effect of proof of claim.
2929. Notice and hearing.
2930. Appearance; default.
2931. Determination of secured status.
2932. Order.
2933. Reconsideration.

**(F) PRIORITIES.**

2951. In general.
2952. Liens.
2953. Sureties, subrogees, and assignees in general.
2954. Governmental claims; taxes.
- 2954.1. — In general.
2955. — State and local government claims.
2956. — Federal claims.
2957. Interest and penalties.
2958. Employees' claims.
- 2958.1. — In general.
2959. — Time element; vacation pay.
2960. — Assignees of subrogees.
2961. — Benefit plan contributions.
2962. Costs and fees assessed against estate.
2963. Consumer purchases.

**51. BANKRUPTCY****VII. CLAIMS.**(Cont'd)

- 2964. Partnership claims.
- 2966. Superpriority; extension of credit or failure of adequate protection.
- 2967. Subordination.
- 2967.1. — In general.
- 2967.5. — Inequitable conduct.
- 2968. — Insiders, stockholders, fiduciaries, and dominant persons.
- 2969. — Security purchase rescission claims.
- 2970. — Subordination agreements.
- 2971. Marshaling.
- 2972. Determination of priority.

**VIII. TRUSTEES.**

- 3001. In general.
- 3002. Interim trustees.
- 3003. Eligibility and competency.
- 3004. Appointment; election.
- 3004.1. — In general.
- 3005. — Election disputes; certification by United States Trustee.
- 3006. Bond.
- 3007. Tenure and removal.
- 3008. Powers, duties and fiduciary capacity.
- 3008.1. — In general.
- 3009. — Representation of debtor, estate, or creditors.
- 3009.5. Environmental law.
- 3010. Instructions of court.
- 3011. Liabilities in general; accounting.

**IX. ADMINISTRATION.**

*Excludes matters peculiar to reorganization or debt adjustment cases, see XVIII et seq., below.*

**(A) IN GENERAL.**

- 3021. In general.
- 3022. Debtor's duties in general.
- 3023. Redirection of mail.
- 3024. Creditors' and equity security holders' committees and meetings.
- 3025. Operation of business; contracts.
- 3025.1. — In general.
- 3026. — Debtor in possession.
- 3027. Expenditures in general.
- 3028. Personal expenses of debtor.
- 3029. Employment of professional persons or debtor's officers.

*Excludes compensation, see IX(E), below.*

- 3029.1. — In general.
- 3030. — Attorneys.
- 3030.5. Petition preparers.
- 3030.6. — In general.
- 3030.7. — Definitions; who is a preparer.
- 3030.8. — Duties, functions and prohibited conduct.
- Unauthorized practice of law, see ATTORNEYS AND LEGAL SERVICES ¶102.*
- 3030.9. — Proceedings.
- 3030.10. — Fines, damages and costs.
- 3030.11. — Certification to district courts.
- 3030.12. — Injunction.
- 3031. Submission to arbitration.
- 3032. Compromises, releases, and stipulations.
- 3032.1. — In general.
- 3033. — Judicial authority or approval.
- 3034. Redemption.
- 3035. Obtaining credit.
- 3035.1. — In general.
- 3036. — Credit with priority or security.
- 3037. — Cross-collateralization.
- 3038. — Proceedings.
- 3039. Deposits and investments.
- 3040. Examination and discovery.
- 3040.1. — In general.
- 3041. — Proceedings and order.
- 3042. — Place and time.
- 3043. — Compelling attendance.
- 3044. — Production of documents.
- 3045. — Payment of fees and expenses.
- 3046. — Conduct of examination.
- (1). In general.
- (2). Refusal to answer.
- 3047. — Scope and extent of inquiry.
- (1). In general.
- (2). Privilege.
- 3048. — Use and effect in evidence.

**(B) POSSESSION, USE, SALE, OR LEASE OF ASSETS.**

- 3061. In general.
- 3062. Adequate protection in general.
- 3063. Collection and recovery for estate; turnover.
- 3063.1. — In general.
- 3064. — Turnover by custodians.

**51. BANKRUPTCY****IX. ADMINISTRATION.**(Cont'd)

- 3065. — Adequate protection require-  
ment.
- 3066. — Proceedings.
  - (1). In general.
  - (2). Form and nature; adversary pro-  
ceeding or application or mo-  
tion.
  - (3). Damages claims.
  - (4). Parties; standing.
  - (4.1). — In general.
  - (5). — Shareholder actions.
  - (6). Evidence and fact questions.
- 3067. Sale or assignment of property.
- 3067.1. — In general.
- 3068. — Encumbered property; limited or  
joint interests.
- 3069. — Time for sale; emergency and  
sale outside course of business.
- 3070. — Order of court and proceedings  
therefor in general.
- 3071. — Notice.
- 3072. — Manner and terms.
  - (1). In general.
  - (2). Adequacy of price; appraisal.
- 3073. — Adequate protection; sale free of  
liens.
- 3074. — Validity.
- 3075. — Confirmation.
- 3076. — Conveyance or delivery.
- 3077. — Payment and recovery, or recov-  
ery back, of purchase price.
- 3078. — Application of proceeds.
  - (1). In general.
  - (2). Liens in general.
  - (3). Mortgages.
- 3079. — Rights and liabilities of purchas-  
ers, and right to purchase.
- 3080. — Setting aside.
- 3081. — Collateral attack.
- 3082. Cash collateral, use of.
- 3082.1. — In general.
- 3083. — Adequate protection.
- 3084. — Proceedings.
- 3085. Lease.
- 3086. Assignment of lease or sublease.
- 3086.1. — In general.
- 3087. — Restrictions in lease.
- 3088. — Adequate assurance.

**(C) DEBTOR'S CONTRACTS AND LEASES.**

- 3101. In general.
- 3102. Assumption, rejection, or assignment.
- 3102.1. — In general.
- 3103. — Time for decision.
  - (1). In general.
  - (2). Fixed time or number of days.
  - (3). Extension of time.
  - (4). Reasonable time.
  - (5). Computation.
  - (6). Waiver and estoppel.
- 3103.1. — Necessity for decision.
- 3103.2. — What constitutes decision,  
deemed acceptance, assumption or  
rejection.
- 3104. — Necessity for court approval.
- 3105. Contracts assumable; assignability.
- 3105.1. — In general.
- 3106. — Executory nature in general.
- 3107. — Leases.
- 3108. — Collective bargaining agreements.
- 3109. — “Ipso facto” clauses.
- 3110. Grounds for and objections to assump-  
tion, rejection, or assignment.
- 3110.1. — In general.
- 3111. — “Business judgment” test in gen-  
eral.
- 3112. — Leases.
- 3113. — Collective bargaining agreements.
- 3114. Curing defaults; adequate assurance.
- 3115. Effect of acceptance or rejection.  
*Excludes liability for damages for rejection as breach,  
see §2834, above.*
- 3115.1. — In general.
- 3116. — Partial assumption; burdens and  
benefits.
- 3117. Proceedings.

**(D) ABANDONMENT.**

- 3131. In general.
- 3132. Necessity for judicial approval.
- 3133. Concealed or undiscovered assets.
- 3134. Public health and safety considerations.
- 3135. Effect.
- 3136. Revocation.
- 3137. Proceedings.

**51. BANKRUPTCY****(E) COMPENSATION OF OFFICERS AND OTHERS.****1. IN GENERAL.**

*Excludes status of compensation award as an administrative claim, see ⅈ2877, recovery of fees provided for by agreement pertaining to property securing debt, see ⅈ2853, compensation of insiders and of attorneys in excess of value, see ⅈ2827, and costs and expenses of preserving or disposing of collateral, see ⅈ2854.*

- 3151. In general.
- 3152. Trustees.
- 3153. Examiners.
- 3154. Creditors' committees.

**2. PROFESSIONAL PERSONS IN GENERAL.**

- 3155. In general.
- 3156. Necessity of appointment or approval.
- 3156.1. — In general.
- 3157. — Nunc pro tunc appointment or approval.
- 3158. Interim compensation.
- 3159. Items and services compensable.
- 3160. Amount; hourly rate.
- 3161. Accountants.
- 3162. Appraisers.
- 3163. Brokers.
- 3164. Management consultants.
- 3165. Paraprofessionals.
- 3165.5. Petition preparers.
- 3166. Procedure.
- 3166.1. — In general.
- 3167. — Application; documentation and itemization.
- 3168. — Objections.
- 3169. — Evidence.

**3. ATTORNEYS.**

- 3170. In general.
- 3171. Discretion.
- 3172. Necessity of appointment or approval.
- 3172.1. — In general.
- 3173. — Nunc pro tunc appointment or approval.
- 3174. Persons entitled; members and associates.
- 3175. Interim compensation.
- 3176. Estoppel and waiver.
- 3177. Conflict of interest.
- 3178. Misconduct.
- 3179. Disclosure requirements.
- 3180. Items and services compensable.
- 3181. — In general.

**IX. ADMINISTRATION.(Cont'd)**

- 3182. — Necessity of service.
- 3183. — Benefit to estate.
- 3184. — Services personal to debtor.
- 3185. — Prepetition services.
- 3186. — Preparation of fee request.
- 3187. — Expenses.
  - (1). In general.
  - (2). Clerical, stenographic or copying services.
  - (3). Transportation and meals.
  - (4). Paraprofessional services.
- 3188. — Duplicative services; co-counsel.
- 3190. — Performance of trustee's duties.
- 3191. Amount.
- 3192. — In general.
- 3193. — Factors considered in general.
- 3194. — Lodestar amount and deviations therefrom.
- 3195. — Time expended.
- 3196. — Hourly rate.
- 3197. — Results obtained.
- 3198. — Skill or experience; novelty.
- 3199. — Ministerial or routine acts; travel or other nonlegal work.
- 3200. — Effect of contract; prior compensation.
- 3201. — Trustee as attorney.
- 3202. Procedure.
- 3202.1. — In general.
- 3203. — Application; documentation and itemization.
  - (1). In general.
  - (2). Sufficiency; documentation and itemization.
    - (2.1). — In general.
  - (3). — Time.
  - (4). — Research.
  - (5). — Correspondence, conferences, and telephone calls.
  - (6). — Expenses.
  - (7). — Aggregation or lumping; ineligible items.
- 3204. — Objections; sua sponte determination.
- 3205. — Evidence.

**X. DISCHARGE.**

*Excludes matters peculiar to individual debt adjustment cases, see ⅈ3718, below.*

**51. BANKRUPTCY****(A) IN GENERAL.**

- 3251. In general.
- 3252. Waiver of discharge.

**(B) DISCHARGEABLE DEBTORS.****1. IN GENERAL.**

- 3271. In general.
- 3272. Corporations.
- 3273. Grounds for denial of discharge.
- 3273.1. — In general.
- 3274. — Intent.
- 3275. Successive proceedings.
- 3276. Fraudulent or preferential transfer.
- 3276.1. — In general.
- 3277. — Transfer to nondebtor spouse or family members.
- 3278. Failure to keep records.
- 3278.1. — In general.
- 3279. — Sufficiency of records.
- 3280. — Justification.
- 3281. Destruction or mutilation of records.
- 3282. False oath or account.
- 3282.1. — In general.
- 3283. — Oath or account as to property or indebtedness.
- 3284. — Errors on and omissions from schedules.
- 3285. Withholding records; failure to cooperate with trustee.
- 3286. Failure to explain loss or deficiency.
- 3287. Refusal to obey court order; asserting privilege against self-incrimination.
- 3288. Concealment of property.
- 3288.1. — In general.
- 3289. — Nature of property; debtor's interest.
- 3290. Insider acts.

**2. DETERMINATION OF DISCHARGEABILITY.**

- 3311. In general.
- 3312. Time for proceedings.
- 3313. Pleading.
- 3314. Evidence.
- 3314.1. — In general.
- 3315. — Presumptions and burden of proof.
  - (1). In general.
  - (2). Particular grounds for objection to discharge.

**X. DISCHARGE.(Cont'd)**

- 3316. — Admissibility.
- 3317. — Weight and sufficiency.
  - (1). In general.
  - (2). Particular grounds for objection to discharge.
  - (2.1). — In general.
  - (3). — Concealment; omission.
  - (4). — Failure to explain loss or deficiency.
  - (5). — Fraudulent or preferential transfers.
  - (6). — Records, matters relating to.
  - (7). — False oath or account.
- 3318. Hearing, determination, and order; discretion.
- 3318.1. — In general.
- 3319. — Presence of debtor.
- 3320. Revocation or modification.
- 3320.1. — In general.
- 3321. — Grounds.
- 3322. — Application, hearing, and determination.

**(C) DEBTS AND LIABILITIES DISCHARGED.****1. IN GENERAL.**

- 3341. In general.
- 3342. Effect of state law in general.
- 3343. Particular debts or liabilities.
- 3343.1. — In general.
- 3343.2. — Costs and fees.
- 3343.3. — Debts not scheduled or listed.
- 3343.4. — Post-petition debts or liabilities.
- 3343.5. — Taxes and assessments.
- 3344. Governmental overpayments.
- 3345. Environmental cleanup obligations.
- 3346. Consumer credit charges.

**2. DEBTS ARISING FROM DIVORCE OR SEPARATION.**

- 3363. In general.
- 3364. Pension allocations.
- 3365. Property distribution and alimony, maintenance, or support.
  - (1). In general.
  - (2). Property distribution or spousal support, particular applications.
  - (3). — In general.
  - (4). — Obligations assumed.

**51. BANKRUPTCY****X. DISCHARGE.**(Cont'd)

- (5). — Obligations assigned; public agency claims.
- (6). — Payments to protect residence or automobile and utilities.
- (7). — Credit card debts.
- (8). — Medical or dental bills and life insurance.
- (9). — Legal expenses.
- (10). — Guardian ad litem fees.
- (11). — Indemnity or hold-harmless provisions.
- (12). — Contractual provisions; separation agreements.
- (13). Child support.
- 3366. Effect of state law.
- 3367. Nondischargeability of property distributions.
  - (1). In general.
  - (2). Ability to pay.
  - (3). Benefit/detriment analysis.
- 3368. Nonmarital relationships; same-sex or other nontraditional unions.

**3. EDUCATIONAL LOANS.**

- 3369. In general.
- 3370. Time factor.
- 3371. Hardship.
  - (1). In general.
  - (2). Hardship found.
  - (3). Hardship not found.

**4. FRAUD.**

- 3372.1. In general.
- 3372.2. Purpose of exception to dischargeability.
- 3372.3. Elements of fraud in general.
- 3372.4. Particular representations.
- 3372.5. Matters of opinion.
- 3372.6. Financial condition; value.
- 3372.7. Necessity of writing.
- 3372.8. False pretenses; conduct, concealment, omission or silence; implied representations.
- 3372.9. Promise or intention of future action; failure to pay or perform.
- 3372.10. Obtaining money, property, or service.
- 3372.11. Extension of credit.

**X. DISCHARGE.**(Cont'd)

- 3372.12. Cause of loss.
- 3372.13. Fraud committed by agent or one other than debtor.
- 3372.14. Actual, constructive, or implied fraud.
- 3372.15. Intent or knowledge.
- 3372.19. Moral turpitude.
- 3372.20. Obtaining money or property for another.
- 3372.21. Judgments.
- 3372.22. Construction contracts.
- 3372.23. Transactions involving collateral or security.
- 3372.24. Use of checks.
- 3372.25. Credit cards; charge accounts.
- 3372.26. Use of money or property obtained.
- 3372.27. False financial statements.
- 3372.28. — In general.
- 3372.29. — Writings; publication.
- 3372.30. — Intent; recklessness.
- 3372.31. — “Materially false” statements.
- 3372.32. — Omissions.
- 3372.33. — Corporations; partnerships.
- 3372.34. — Husband and wife.
- 3372.35. Refinancing or renewal of credit.
- 3372.36. Reliance; time element.
- 3372.37. Reasonable or justifiable reliance.
- 3372.38. — In general.
- 3372.39. — Creditor’s duty to investigate; sufficiency of investigation.
- 3372.40. — Loss or prejudice.
- 3372.41. — Partial reliance.
- 3372.42. — Particular cases.
- 3372.43. — Banks, cases involving.
- 3372.44. Luxury goods.

**5. TORTS AND CRIMES.**

- 3373. In general.
- 3374. Willful and malicious injury.
  - (1). In general.
  - (2). Willfulness; willful injury.
  - (5). Malice; malicious injury.
  - (8). Particular injuries.
  - (9). — In general; fraud.
  - (10). — Conversion and civil theft.
  - (11). — Disposition of or injury to collateral.

**51. BANKRUPTCY****X. DISCHARGE.**(Cont'd)

- (12). — Drunk or reckless driving; vehicular homicide.
- 3375. Larceny or embezzlement.
- 3376. Fraud or defalcation in fiduciary capacity.
  - (1). In general.
  - (2). Fiduciaries and fiduciary capacity.
  - (3). — In general.
  - (4). — Trustees.
  - (5). Defalcation.
  - (6). Fraud.
- 3377. Fines, penalties, and forfeitures; punitive damages, and interest.
- 3378. Probation and conditions; restitution.

**(D) DETERMINATION OF DISCHARGEABILITY.**

- 3395. In general.
- 3396. Time for proceedings.
- 3397. — In general.
- 3398. — Extension of time.
- 3399. Pleading.
- 3400. Parties; standing.
- 3401. Evidence.
- 3402. — In general.
- 3403. — Presumptions and burden of proof.
  - (1). In general.
  - (2). Alimony; support or maintenance.
  - (3). Property distribution on divorce or separation.
  - (4). Educational loans.
  - (5). Debts for goods, services, or credit obtained by fraud.
  - (6). — In general.
  - (7). — Intent.
  - (8). — False financial statements.
  - (9). — Loans and notes; bad checks.
  - (10). — Credit cards; charge accounts.
  - (11). Defalcation; larceny; embezzlement.
  - (12). Willful or malicious injury.
  - (13). Luxury goods or services.
  - (14). Unscheduled debts; notice.
- 3404. — Admissibility.
- 3405. — Weight and sufficiency.

**X. DISCHARGE.**(Cont'd)

- (1). In general.
- (2). Alimony; support or maintenance.
- (3). Property distribution on divorce or separation.
- (4). Educational loans.
- (5). Debts for goods, services, or credit obtained by fraud.
- (6). — In general.
- (7). — False financial statements.
- (8). — Loans and notes; bad checks.
- (9). — Credit cards; charge accounts.
- (10). Defalcation; larceny; embezzlement.
- (11). Willful or malicious injury.
- (12). Degree of proof required.
- (13). — In general.
- (14). — Particular cases.
- 3406. Questions for jury.
- 3407. Hearing and determination; default.
- 3408. — In general.
- 3409. — Award on determination of non-dischargeability.

**(E) EFFECT OF DISCHARGE.**

*Excludes limitations on proceedings, sanctions, or discrimination against debtor, see IV, above.*

- 3411. In general.
- 3412. Effect as to co-debtors, guarantors, and sureties.
- 3413. Effect as to securities and liens.
  - 3413.1. — In general.
- 3414. — Judgments or executions.
- 3415. Reaffirmation.
  - 3415.1. — In general.
- 3416. — Grounds for approval or rejection.
- 3417. — Judicial hearing and approval.
  - Excludes evidence of reaffirmation, see ¶3419, below.*
- 3418. Pleading discharge.
- 3419. Evidence as to discharge or reaffirmation.

*Excludes evidence relating to initial dischargeability proceedings in the debtor's bankruptcy case, see ¶3401–3405 above.*



**51. BANKRUPTCY****XI. LIQUIDATION, DISTRIBUTION,  
AND CLOSING.**

- 3441. In general.
- 3442. Distribution.
  - 3442.1. — In general.
- 3443. — Order of distribution.
- 3444. Reopening.
  - 3444.10. — In general.
  - 3444.20. — Discretion.
  - 3444.30. — Grounds and objections.
    - (1). In general.
    - (2). Unadministered assets.
    - (3). Omitted creditors.
    - (4). Avoidance of liens.
    - (5). Prejudice or harm to creditors.
    - (6). No-asset cases.
    - (7). Fraud or collusion.
    - (8). State court or other non-bankruptcy determinations.
- 3444.40. — Conditions.
- 3444.50. — Proceedings.
  - (1). In general.
  - (2). Standing; sua sponte determinations.
  - (3). Time for proceeding; laches.
  - (4). Evidence.
- 3444.60. — Effect.
- 3445. Reversion of surplus to debtor.

**XII. BROKER AND CLEARING  
BANK LIQUIDATION.**

- 3461. Stock or commodity broker liquidation in general.
 

*Excludes proceedings under supervision of the Securities Investor Protection Corporation, see SECURITIES REGULATION §§185.10 to 185.21.*
- 3471. Clearing bank liquidation in general.

**XIII. ADJUSTMENT OF DEBTS  
OF A MUNICIPALITY.**

- 3481. In general.

**XIV. REORGANIZATION.****(A) IN GENERAL.**

*This division is limited to concepts, proceedings, and entities not familiar to straight bankruptcy.*

- 3501. In general; nature and purpose.
- 3502. Good faith; motive.
  - 3502.1. — In general.
  - 3502.5. — “Good faith.”.
  - 3502.10. — “Bad faith.”.

**XIV. REORGANIZATION.(Cont'd)**

- 3502.15. — Realistic possibility of reorganization.
- 3502.20. — Abuse of judicial process.
- 3502.25. — Frustration or delay of creditors.
- 3503. — Recent organization or transfer.
- 3504. Aircraft equipment and vessels.

**(B) THE PLAN.**

- 3531. In general.
- 3532. Duty to file.
- 3533. Who may file, and time for filing.
  - 3533.1. — In general.
- 3534. — Creditors; loss of debtor’s exclusive right.
- 3535. — Separate plans.
- 3536. Impairment of claims or interests.
  - 3536.1. — In general.
- 3537. — Curing defaults.
- 3538. Valuation.
- 3539. Disclosure and solicitation.
  - 3539.1. — In general.
- 3540. — Proceedings for approval; objections.
- 3541. Acceptance.
  - 3541.1. — In general.
- 3542. — By one class.
- 3543. — “Deemed” acceptance; unimpaired classes.
- 3544. — Eligibility to vote; impairment.
- 3545. — Number of creditors and amount of claims concurring.
- 3546. — Insiders, acceptance by.
- 3547. — Determination.
- 3548. Requisites of confirmable plan.
  - 3548.1. — In general.
- 3549. — Contents in general.
- 3550. — Classification of claims.
- 3551. — Specification of impairment.
- 3552. — Equality of treatment within classes.
- 3553. — Means of implementation.
- 3554. — Optional provisions.
- 3555. — Settlement, adjustment, or enforcement of claims.
- 3556. — Sale or liquidation.
- 3557. — Limitations on exemptions.
- 3558. Good faith and legality.

**51. BANKRUPTCY****XIV. REORGANIZATION.**(Cont'd)

- 3559. Feasibility in general.
- 3560. Provisions for satisfaction of claims; relation to recovery in liquidation.
- 3561. Preservation of priority.
- 3562. Tax claims.
- 3563. Fairness and equity; "cram down.".
- 3563.1. — In general.
- 3564. — Secured creditors, protection of.
- 3565. — Unsecured creditors and equity holders, protection of.
- 3566. Confirmation; objections.
- 3566.1. — In general.
- 3567. — Notice.
- 3568. — Effect.
  - (1). In general.
  - (2). Conclusiveness.
  - (3). Effect as discharge.
- 3569. Modification or revocation.
- 3570. Construction, execution, and performance.

**(C) CONVERSION OR DISMISSAL.**

- 3591. In general; grounds in general.
 

*Excludes motive or want of good faith, see §3502, 3503, above, and dismissal before presentation of plan, see §2259–2264, 2295, above.*

  - (1). In general.
  - (2). Dismissal or suspension.
  - (3). Discretion.
  - (4). Want or inadequacy of plan.
  - (5). Farmer cases.
- 3592. Loss to or diminution of estate and unlikelihood of rehabilitation.
- 3593. Proceedings.
- 3594. Effect; proceedings in converted case.

**(D) ADMINISTRATION.**

- 3621. In general; judicial supervision.
- 3622. Debtor in possession, in general.
- 3623. Appointment of trustee or examiner.
- 3623.1. — In general.
- 3624. — Necessity or grounds.
- 3625. — Presumption against appointment.
- 3626. — Proceedings.
- 3627. Examiner's functions and duties.

**(E) RAILROAD REORGANIZATION.**

*Excludes reorganization under non-bankruptcy laws, see RAILROADS §30.*

- 3651. In general.
- 3652. Plan.
- 3653. Operation of railroad and abandonment or sale of lines and property.
- 3654. Interests in rolling stock.

**XV. ARRANGEMENTS.****(A) IN GENERAL.**

- 3661.100. In general.
- 3661.101. Provisions of arrangement.
- 3661.102. Acceptance and confirmation.
- 3661.103. Effect of confirmation, and proceedings thereafter.
- 3661.104. Dismissal and adjudication.

**(B) REAL PROPERTY ARRANGEMENTS.**

- 3661.111. In general.
- 3661.112. Provisions of arrangement.
- 3661.113. Acceptance and confirmation.
- 3661.114. Effect of confirmation, and proceedings thereafter.
- 3661.115. Dismissal and adjudication.

**XVI. COMPOSITIONS.**

- 3662.100. Right to offer.
- 3662.101. Proceedings in general.
- 3662.102. Terms.
- 3662.103. Acceptance by creditors.
- 3662.104. Deposit for payments.
- 3662.105. Application in general.
- 3662.106. Notice of application.
- 3662.107. Objections to composition.
- 3662.108. Hearing and determination of application.
- 3662.109. Confirmation and proceedings thereon.
- 3662.110. — In general.
- 3662.111. — Distribution.
- 3662.112. Setting aside.
- 3662.113. Operation and effect.
- 3662.114. New promise to pay debt.
- 3662.115. Pleading.

**51. BANKRUPTCY****XVII. ADJUSTMENT OF DEBTS  
OF FAMILY FARMER.****(A) IN GENERAL.**

- 3671. In general.
- 3672. Trustee or debtor in possession.
- 3673. Conversion or dismissal.
- 3674. Discharge.  
*Includes only matter peculiar to this proceeding.*

**(B) THE PLAN.**

- 3681. In general.
- 3682. Contents; pre-confirmation modification.
- 3683. Confirmation.
- 3683.1. — In general.
- 3683.3. — Modification.
- 3683.5. — Revocation of confirmation.
- 3685. Payments; implementation.

**XVIII. INDIVIDUAL DEBT ADJUSTMENT.**

- 3701. In general.
- 3702. Good faith in general.
- 3703. Administration; debtor's status; appointment of trustee.
- 3704. Plan.
- 3704.1. — In general.
- 3705. — Claims and assets; propriety and feasibility in general.
- 3706. — Good faith in general.
  - (1). In general.
  - (1.5). Factors considered in determining presence of good faith.
  - (2). Particular plans.
- 3707. — Classification and discrimination.
- 3708. — Secured claims; cram down.
  - (1). In general.
  - (2). Lien retention.
  - (3). Adequate protection; insurance.
  - (4). Surrender of property.
  - (5). Cram down.
  - (6). Valuation; periodic payments.
  - (7). Mortgages in general.
  - (8). Modification of claim, right, or debt in general.
  - (9). Security interests in principal residences.
- 3709. — Unsecured claims.
- 3710. — Amount of repayment; de minimis repayment.
  - (1). In general.
  - (2). Payment in full.

**XVIII. INDIVIDUAL DEBT  
ADJUSTMENT.(Cont'd)**

- (3). Substantial or meaningful payment.
- (4). Payment of 20% or less.
- (5). Token, nominal, de minimis, or zero payment.
- (6). Present value; time value differential; interest.  
*Excludes rate of interest, see INTEREST.*
- (7). Relation to recovery in liquidation.
- 3711. — Curing defaults.
  - (1). In general.
  - (2). Mortgages in general.
  - (3). Home mortgages or similar obligations.
  - (4). Accelerated maturity; effect of foreclosure.
  - (5). Time allowed for cure.
  - (6). Effect of state law.
- 3712. — Mode of repayment; third-person payments.
- 3713. — Time for completion; extension or modification.
- 3714. — Payments outside plan.
- 3715. — Acceptance and confirmation.
  - (1). In general.
  - (2). Discretion; mandatory confirmation.
  - (3). Proceedings in general.
  - (4). Recommendation by trustee.
  - (5). Acceptance or rejection by creditors.
  - (6). Objections; sua sponte determinations.
  - (7). Evidence.
  - (8). Order of confirmation.
  - (9). Effect.
    - (9.1). — In general.
  - (10). — Conclusiveness; res judicata; collateral estoppel.
  - (11). — Property of estate.
  - (12). — Liens and encumbrances; secured creditors.
  - (13). — Tax claims.
  - (14). Revocation, vacation or reconsideration.
- 3716. Conversion or dismissal.
- 3716.10. — In general.
- 3716.20. — Conversion.

**51. BANKRUPTCY****XVIII. INDIVIDUAL DEBT  
ADJUSTMENT.**(Cont'd)

- (1). In general.
- (2). Voluntary conversion; request by debtor.
  - (2.1). — In general.
- (3). — Effect of motion to dismiss.
- (4). Involuntary conversion; request by creditors or other parties in interest.
  - (4.1). — In general.
- (5). — Grounds or cause.
- (6). — Effect of motion to dismiss.
- (7). Proceedings to which case may be converted.
- (8). Proceedings.
- (9). — In general.
- (10). — Motions; sua sponte determinations.
- (11). — Hearing and notice.
- (12). — Evidence.
- 3716.30. — Dismissal.
  - (1). In general.
  - (2). Voluntary dismissal; request by debtor.
    - (2.1). — In general.
  - (3). — Effect of motion for conversion.
  - (4). Involuntary dismissal; request by creditors or other parties in interest.
    - (4.1). — In general.
  - (5). — Grounds or cause in general; bad faith.
  - (6). — Failure to make payments or comply with plan.
  - (7). Proceedings.
  - (8). — In general.
  - (9). — Motions; sua sponte determinations.
  - (10). — Hearing and notice.
  - (11). — Evidence.
- 3716.40. — Revocation, withdrawal of request and reinstatement.
- 3717. — Effect; proceedings in converted case.
- 3718. Discharge.
  - (1). In general.
  - (2). Discharge in liquidation compared.
  - (3). Completion of plan; hardship.

**XVIII. INDIVIDUAL DEBT  
ADJUSTMENT.**(Cont'd)

- (4). Successive proceedings.
- (5). Debts dischargeable.
  - (5.1). — In general.
- (6). — Debts provided for in plan; unfiled claims.
- (7). — Educational loans.
- (8). — Fraud, tort, or crime, liabilities for.
- (9). — Taxes; government claims.
- (10). Objections; proceedings.

**XIX. REVIEW.****(A) IN GENERAL.**

- 3741. In general.

**(B) REVIEW OF BANKRUPTCY COURT.**

- 3761. In general.
- 3762. Jurisdiction.
  - 3762.1. — In general.
- 3763. — Appellate Panel.
- 3764. — District Court.
- 3765. — Court of Appeals.
- 3766. Decisions reviewable.
  - 3766.1. — In general.
- 3767. — Finality.
- 3768. — Interlocutory orders; collateral order doctrine.
- 3769. — Relief from automatic stay.
- 3770. Presentation of grounds for review.
- 3771. Right of review and persons entitled; parties; waiver or estoppel.
- 3772. Petition for leave; appeal as of right; certification.
- 3773. Taking and perfecting appeal; time; bond.
- 3774. Notice of appeal; time.
  - 3774.1. — In general.
- 3775. — Relief from limitation; excusable neglect.
- 3776. Effect of transfer.
  - 3776.1. — In general.
  - 3776.5. — Supersedeas or stay.
    - (1). In general.
    - (2). Right; grant or denial; discretion.
    - (3). Bond.
    - (4). Proceedings; which court.
    - (5). Effect of want of stay; conclusiveness of sale.

**51. BANKRUPTCY****XIX. REVIEW.**(Cont'd)

- 3777. Record; assignments of error; briefs.
- 3778. Dismissal; hearing.
- 3779. Scope of review in general.
- 3780. Questions of law or fact.
- 3781. Moot questions.
- 3782. Conclusions of law; de novo review.
- 3783. Presumptions and burdens of proof.
- 3784. Discretion.
- 3785. Findings of fact.
- 3785.1. — In general.
- 3786. — Clear error.
- 3787. — Particular cases and issues.
- 3788. Harmless error.
- 3789. Determination and disposition; additional findings.
- 3789.1. — In general.
- 3790. — Remand.

**(C) REVIEW OF APPELLATE PANEL.**

- 3811. In general.

**(D) REVIEW OF DISTRICT COURT.**

- 3831. In general.  
*Excludes review of decisions of district courts sitting as courts of review on appeal from bankruptcy courts, see* *⊗3761 et seq., above.*
- 3832. Jurisdiction.
- 3833. Decisions reviewable.
- 3833.1. — In general.
- 3834. — Finality; interlocutory orders.
- 3835. Proceedings for review.
- 3836. Review.
- 3837. Determination and disposition.

**XX. OFFENSES.**

- 3861. In general.
- 3862. Prosecutions.
- 3863. Evidence and fact questions.

**58. BONDS****SUBJECTS INCLUDED**

Instruments in writing under seal whereby the maker binds himself to pay a certain sum of money absolutely or conditionally

Their nature, requisites, validity, incidents, construction, operation and effect in general

Negotiability, transfer and rights of transferees

Actions on bonds

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Other contracts or transactions, bonds incident to, as bonds for title to or conveyance of real property, see **REAL PROPERTY CONVEYANCES** and other specific topics

Particular classes of makers, bonds by, see **INFANTS, MENTAL HEALTH** and other specific topics

— Corporations, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

— Governments, see **STATES, UNITED STATES**

— Political or municipal bodies see **COUNTIES, MUNICIPAL CORPORATIONS** and other specific topics

Particular types of bonds—

Bottomry and respondentia, see **SHIPPING**

Fiduciary duties, bonds for performance of, see **EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, TRUSTS** and other specific topics

Indemnity, see **INDEMNITY**

Mortgage bonds, see **MORTGAGES AND DEEDS OF TRUST**

Official duties, bonds for performance of, see **PUBLIC EMPLOYMENT, SHERIFFS AND CONSTABLES** and other specific topics

Particular remedies or legal proceedings, bonds required or incident to, see **ARREST, BAIL, CREDITORS' REMEDIES**, and other specific topics

Promissory notes under seal, see **COMMERCIAL PAPER**

Subrogation to rights of obligees, see **SUBROGATION**

Sureties' distinct rights and liabilities, see **PRINCIPAL AND SURETY**

I. REQUISITES AND VALIDITY, *⊗*1-47.

**58. BONDS**

II. CONSTRUCTION AND OPERATION,  
 ⌘48–73.

III. NEGOTIABILITY AND TRANSFER,  
 ⌘74–102.

IV. PERFORMANCE OR BREACH OF  
 CONDITION, ⌘103–113.

V. ACTIONS, ⌘114–148.

**I. REQUISITES AND VALIDITY.**

1. Nature and essentials in general.
2. What law governs.
3. Parties.
6. Form and contents.
12. Execution in general.
13. Signature.
14. Seal.
15. Attestation.
16. Acknowledgment.
17. Affixing revenue stamps.
18. Recording and registration.
19. Partial execution, and failure of others to sign.
20. Execution in blank.
21. Ratification of instrument defectively executed.
22. Delivery.
26. Consideration.
31. Statutory bonds and bonds taken by officers.
37. Validity of assent.
42. Legality of condition or of consideration.
43. Legality of particular provisions.
44. Effect of invalidity.

**II. CONSTRUCTION AND OPERATION.**

48. General rules of construction.
49. What law governs.
50. Common-law or statutory bonds.
51. Parties.
56. Amount of obligation or penalty.
57. Scope and effect of conditions.
61. Commencement and duration of liability.
62. Amount or extent of liability.
63. Interest.
64. Place of performance or payment.
65. Time of performance or payment.
66. Marginal memoranda and indorsements.
67. Collateral agreements.
68. Redelivery or surrender of bond to obligor.

II. **CONSTRUCTION AND OPERATION.**(Cont'd)

69. Agreements to cancel or rescind.

70. Cancellation for invalidity.

**III. NEGOTIABILITY AND TRANSFER.**

74. Negotiability in general.
75. What law governs.
76. Statutory provisions.
77. Words of negotiability.
78. Nature and form of instrument.
79. Interest coupons.
80. Effect of matters subsequent to making of instrument.
81. Transfer by indorsement.
82. Transfer without indorsement in general.
83. Assignment.
84. Sale.
85. Operation and effect of transfer as to title.
86. Rights and liabilities on indorsement or other transfer in general.
87. Rights and liabilities on assignment or sale.
92. Bona fide purchasers.

**IV. PERFORMANCE OR BREACH OF CONDITION.**

103. Obligation to perform in general.
105. Sufficiency of performance of condition.
106. Excuses for nonperformance.
107. Acceptance of performance, and waiver of defects or objections.
108. Discharge from performance.
109. Breach of condition.
113. Payment.

**V. ACTIONS.**

114. Right of action.
119. Nature and form of remedy.
120. Defenses.
121. Jurisdiction and venue.
122. Parties.
123. Pleading.
129. Evidence.
133. Damages and amount of recovery.
139. Trial.
144. Judgment.
147. Execution.
148. Costs.

**59. BOUNDARIES****59. BOUNDARIES****SUBJECTS INCLUDED**

Lines dividing contiguous lands, as described in conveyances, surveys and the like or indicated by marks of separation, natural and artificial

Ascertainment and establishment of such lines

Agreements between adjoining proprietors

Legal proceedings relating thereto

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Adjoining landowners' mutual rights, duties and liabilities in general, see ADJOINING LANDOWNERS

Adverse possession, effect of, see ADVERSE POSSESSION

Conveyances, description of property covered, see REAL PROPERTY CONVEYANCES, MORTGAGES AND DEEDS OF TRUST, and other specific topics

Fences, see FENCES

Indian reservations, see INDIANS ¶158

Party walls, see PARTY WALLS

Public lands, government surveys, see PUBLIC LANDS

Rights and liabilities of owners of land bounded by—

Highways, see HIGHWAYS

Water, see WATER LAW

States and their political subdivisions, boundaries of, see STATES, COUNTIES, EDUCATION, MUNICIPAL CORPORATIONS, TOWNS

I. DESCRIPTION, ¶1–25.

II. EVIDENCE, ASCERTAINMENT, AND ESTABLISHMENT, ¶26–56.

**I. DESCRIPTION.**

1. General rules of construction.
2. Particular words or terms.
3. Relative importance of conflicting elements.
  - (1). In general.
  - (2). Control of elements consistent with intention.

**I. DESCRIPTION.(Cont'd)**

- (3). Control of natural objects and monuments over other elements in general.
- (4). Control of water courses, highways, and fences over other elements.
- (5). Control of metes and bounds or courses and distances over other elements.
- (6). Control of lines marked or surveyed over other elements.
- (7). Control of calls for adjoiners over other elements.
- (8). Control of maps, plats, and field notes over other elements.
- (9). Control of quantity over other elements.
4. Natural and permanent objects.
5. Artificial monuments and marks.
6. Courses and distances.
7. Location of corners.
8. Location of lines.
9. Designation, quantity, and location of land.
10. Maps, plats, and field notes.
11. Adjoining or adjacent lands.
12. Waters and water courses.
13. — In general.
14. — Construction of language of description.
17. — Artificial bodies of water.
19. Roads, ways, and public grounds.
- 19.1. — In general.
20. — Public ways.
  - (1). In general.
  - (2). Effect of location, dedication, or occupation.
  - (3). Conveyance by state, municipality, or owner of fee of bed of highway.
  - (4). Beginning point on or call for side of highway.
  - (5). Description with reference to map and quantity intended to be conveyed.
21. — Private ways.
22. — Railroad rights of way.
23. — Public grounds.
24. Priority of grants and deeds.
25. Priority of surveys.

**59. BOUNDARIES****II. EVIDENCE, ASCERTAINMENT,  
AND ESTABLISHMENT.**

- 26. Nature and form of remedy.
- 27. Right of action and defenses.
- 28. Jurisdiction.
- 29. Venue.
- 30. Parties.
- 31. Process and appearance.
- 32. Pleading.
- 33. Presumptions and burden of proof.
- 34. Admissibility of evidence.
- 35. — In general.
  - (1). In general.
  - (2). Reputation or tradition.
  - (3). Testimony of surveyors and their assistants.
  - (4). Agreement, acquiescence, and practical location by parties.
  - (5). Location of monuments or marks.
- 36. — Documentary evidence.
  - (1). In general.
  - (2). Deeds and grants.
  - (3). Maps and plats.
  - (4). Former proceedings and adjudications other than actions.
  - (5). Records of surveys and maps.
- 37. Weight and sufficiency of evidence.
  - (1). In general.
  - (2). Courses and distances.
  - (3). Location of corners, lines, and monuments.
  - (4). Waters and water courses and highways as boundaries.
  - (5). Agreement or recognition as to location of boundary.
- 38. Trial of issues.
- 39. — In general.
- 40. — Questions for jury.
  - (1). In general.
  - (2). Water courses or highways as boundaries.
  - (3). Agreement, recognition, or acquiescence.
- 41. — Instructions.
- 42. — Verdict and findings.
- 43. Judgment and enforcement thereof.
- 44. Review.
- 45. Costs.
- 46. Agreements between parties.
  - (.5). In general.

**II. EVIDENCE, ASCERTAINMENT, AND  
ESTABLISHMENT.(Cont'd)**

- (1). Validity in general.
- (2). Persons bound by agreement.
- (3). Conclusiveness and effect of agreement.
- (4). Cancellation or abrogation of agreement.
- (5). Arbitration and reference.
- 47. Estoppel in general.
  - (1). In general.
  - (2). Purchase made in reliance on erroneous statements or acts.
  - (3). Effect of improvements made by party claiming estoppel.
  - (4). Mistake in pointing out boundaries.
  - (5). Acts of third persons.
- 48. Recognition and acquiescence.
  - (1). In general.
  - (2). What constitutes acquiescence.
  - (3). Time of acquiescence.
  - (4). Controlling influence of acquiescence.
  - (5). Persons bound by acquiescence.
  - (6). Conclusiveness and effect of acquiescence in general.
  - (7). Effect of mistake, misrepresentation, or ignorance of rights.
  - (8). Acquiescence as evidence of agreement.
- 49. Practical location by parties.
- 50. Adjudication by public authorities.
- 51. — In general.
- 52. — Appointment and proceedings of commissioners or processions.
  - (1). In general.
  - (2). Review by court.
  - (3). Persons bound by and conclusiveness of determination.
- 53. Private surveys.
- 54. Official surveys.
  - (1). In general.
  - (2). Method of making surveys.
  - (3). Review.
  - (4). Conclusiveness in general.
  - (5). Acquiescence in survey.
  - (6). Presumption as to correctness and regularity.
  - (7). Fees and expenses.



**59. BOUNDARIES****II. EVIDENCE, ASCERTAINMENT, AND ESTABLISHMENT.(Cont'd)**

55. Apportionment of excess or deficiency.  
 56. Removal of landmarks.

**60. BOUNTIES****SUBJECTS INCLUDED**

- Pecuniary premiums offered by government to all persons enlisting in the public service, or engaging in particular industries, or performing specified services for the public benefit  
 Acceptance of such offers and performance of conditions thereof or services required  
 Proceedings to obtain and payment of such bounties

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Bounty lands, see PUBLIC LANDS  
 Pensions for past services, see PENSIONS  
 Retirement benefits, see ARMED SERVICES, STATES and other specific topics  
 Rewards offered for performance of single and special services, see REWARDS

1. Enlistment in army.
2. Destruction of enemy's vessel.
3. Vessels engaged in fisheries.
4. Manufacture of salt.
5. Sinking artesian wells.
6. Planting trees and hedges.
7. Production of sugar.
8. Destruction of wild animals.

**63. BRIBERY****SUBJECTS INCLUDED**

- Offering, promising, giving, accepting or agreeing to accept money, property or oth-

er consideration to influence action by a public officer or other action affected with the public interest

Commercial bribery and sports bribery

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Elections, bribery of voters or officers, see ELECTION LAW

Extortion under color of office, see EXTORTION

Impeachment and removal from office for bribery, see PUBLIC EMPLOYMENT and specific topics relating to particular classes of officers

Lobbying and offenses relating to enactment of statutes, see LOBBYING, STATUTES  
 ⇐1054

1. Nature and elements of offenses.

(1). In general.

(2). Bribery of jurors and particular classes of officers.

2. Constitutional and statutory provisions.

3. Defenses, and persons liable.

5. Indictment or information.

5.1. — In general.

6. — Requisites and sufficiency.

(1). In general.

(2). Solicitation of bribe.

(3). Nature and value of bribe.

(4). Act to be done in consideration of bribe, and authority and opportunity to act.

7. — Issues, proof, and variance.

8. Evidence.

8.1. — In general.

9. — Presumptions and burden of proof.

10. — Admissibility.

11. — Weight and sufficiency.

12. Trial.

12.1. — In general.

13. — Questions for jury.

14. — Instructions.

15. — Verdict and findings.

16. Sentence and punishment.

**64. BRIDGES****64. BRIDGES****SUBJECTS INCLUDED**

Construction, maintenance, regulation and use of bridges for passage of the public, whether erected under franchises granted therefor or directly by the government, and whether passage be subject to payment of tolls or free

Organization, franchises and powers of bridge companies

Rights, duties and liabilities of such companies or of municipalities in respect to management and operation of their bridges

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Corporations in general, matters applicable to, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Culverts and similar drainage facilities in highways, see HIGHWAYS

Eminent domain, exercise of power of, see EMINENT DOMAIN

Municipalities and similar bodies, power to aid bridge companies and liabilities incurred for that purpose, see MUNICIPAL CORPORATIONS and other specific topics

Navigation, obstruction by bridges, see WATER LAW

Railroad bridges and viaducts, see RAILROADS

Road and bridge districts, see HIGHWAYS

Taxation of bridges, see TAXATION

I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE, ¶1–28.

II. REGULATION AND USE FOR TRAVEL, ¶29–47.

**I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE.**

1. Right to establish and maintain in general.
2. What constitutes a bridge.
3. Approaches and appliances as part of bridge.
4. Character of bridge as highway.
5. Constitutional and statutory provisions.
6. Establishment by public authorities.
7. — In general.

**I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE.(Cont'd)**

8. — Proceedings.
9. — Liabilities for expenses.
  - (1). In general.
  - (2). County aid to townships.
10. — Contribution to expenses.
  - (1). In general.
  - (2). Bridges between counties.
  - (3). Bridges between towns.
11. — Appropriation of money.
12. — Taxes and assessments.
13. Bridge companies and districts.
  - 13.1. — In general.
14. — Incorporation and organization.
15. — Franchises, privileges, and powers.
16. — Public aid.
17. — Actions.
18. Location.
19. Right of way and other interests in land.
20. Construction.
  - (1). In general.
  - (2). Contracts.
    - (2.1). — In general.
  - (3). — Authority to make contract.
  - (4). — Performance or breach of contract.
  - (5). Inspection, approval, and acceptance.
  - (6). Actions.
21. Maintenance and repair.
  - (.5). In general.
  - (1). Power and duty to maintain and repair in general.
  - (2). Counties.
  - (3). Towns.
  - (4). Cities and villages.
  - (5). Bridges on or near boundaries of municipalities.
  - (6). Contracts and bonds.
  - (7). Judicial supervision.
  - (8). Interference by third persons.
22. Rebuilding after destruction.
23. Injuries from construction or maintenance.
24. Penalties for failure to construct or maintain.
25. Sale and transfer of bridge.
26. Acquisition by public authorities.

**64. BRIDGES****I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE.**(Cont'd)

27. Injuries to bridges, approaches, or appliances.  
*Excludes injury by vessel, see SHIPPING* §81(2).
28. Offenses incident to construction and maintenance.

**II. REGULATION AND USE FOR TRAVEL.**

29. Power to control and regulate.
30. Statutory and municipal regulations.
31. Licenses and taxes.
32. Mode and purposes of use.
33. Tolls.
34. Liabilities for injuries.
35. — In general.
36. — Care required of bridge companies and proprietors.
37. — Care required and liability of public authorities in general.
38. — Statutory provisions as to liabilities of municipalities and officers.
39. — Duty and ability to repair.
- (1). In general.
- (2). Effect of lack of appropriation or fund for maintenance of bridges.
- (3). Bridges erected by railroad companies.
- (4). Bridges on boundaries between municipalities.
- (5). Liability as between contractor and municipality.
40. — Sufficiency and safety of bridge in general.
- (1). In general.
- (2). Extraordinary or unusual use or test.
41. — Defects or obstructions causing injury.
- (1). In general.
- (2). Absence of or defect in guard rails.
42. — Notice of defects or obstructions.
43. — Proximate cause of injury.
44. — Contributory negligence.
- (1). In general.
- (2). Extraordinary load.
- (3). Fast driving.
- (4). Knowledge of defect or danger.

**II. REGULATION AND USE FOR TRAVEL.**(Cont'd)

45. — Notice of claim for injury.
46. Actions for injuries.
- (.5). In general.
- (1). Limitations.  
*See also LIMITATION OF ACTIONS.*
- (2). Parties.
- (3). Pleading.
- (4). Presumptions and burden of proof.
- (5). Admissibility of evidence.
- (6). Weight and sufficiency of evidence.
- (7). Damages.
- (8). Questions for jury.
- (8.1). — In general.
- (9). — Absence of or defects in guard rails.
- (10). — Notice of defects.
- (11). — Proximate cause of injury.
- (12). — Contributory negligence.
- (13). Instructions.
- (14). Verdict, findings, and judgment.
47. Penalties for violations of regulations.

**65. BROKERS****SUBJECTS INCLUDED**

Regulation and conduct of the business of negotiating contracts and bargains on behalf of others, without possession or control by the broker, as such, of any property involved

Rights, powers, duties and liabilities of such brokers and their principals or employers, as between themselves and as to others, arising from the relation between them and incidental transactions, such as advances, pledges and the like

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Agency in general, and on particular occasions only, not in course of the agent's ordinary business, see PRINCIPAL AND AGENT

**65. BROKERS**

Customs brokers, see CUSTOMS DUTIES

Exchanges, rights and liabilities of brokers as members, see EXCHANGES

Factors, commission merchants and the like, having possession or control of goods for purposes of sale, see FACTORS

Particular kinds of business, agency incident to, see INSURANCE, SHIPPING and other specific topics

Securities broker-dealers regulation, see SECURITIES REGULATION

**I. REGULATION AND CONDUCT OF BUSINESS IN GENERAL,** Ⓔ1-5.

**II. EMPLOYMENT,** Ⓔ6-11.

**III. AUTHORITY,** Ⓔ12-18.

**IV. DUTIES AND LIABILITY TO PRINCIPAL,** Ⓔ19-38.

**V. COMPENSATION,** Ⓔ39-76.

**VI. LIEN,** Ⓔ77.

**VII. ACTIONS FOR COMPENSATION,** Ⓔ78-90.

**VIII. RIGHTS, POWERS, AND LIABILITIES AS TO THIRD PERSONS,** Ⓔ91-106.

**I. REGULATION AND CONDUCT OF BUSINESS IN GENERAL.**

1. Statutory and municipal regulations.
2. Who are brokers.
3. Licenses and taxes.
4. Conduct of business in general.
5. Offenses by brokers.

**II. EMPLOYMENT.**

6. Relation to principal in general.
7. Appointment or employment.
8. Evidence of agency.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.
9. Duration and termination of agency.
10. Revocation of agency.
11. Breach by principal of contract of employment.

**III. AUTHORITY.**

12. Authority conferred.
13. — In general.

**III. AUTHORITY.**(Cont'd)

14. — Purchase or sale of real property.
15. — Purchase or sale of goods.
16. — Purchase or sale of stocks or other securities, contracts, or options.
17. — Loan of money.
18. Delegation of authority.

**IV. DUTIES AND LIABILITY TO PRINCIPAL.**

19. Nature of broker's obligation.
20. What law governs.
21. Mode of execution of agency.
22. Skill and care required.
23. Custody and care of principal's property and funds.
24. Purchases and sales on margin.
  - (1). In general.
  - (2). Call for margins or deposits, and sale or other disposition of property on failure to respond to call.
25. Advances by broker.
26. Title to property purchased or held by broker.
27. Sales on credit.
28. Keeping and rendering accounts.
29. Failure to act.
30. Unauthorized acts.
31. Individual interest of broker.
32. Acting for parties adversely interested.
33. Insolvency of broker.
34. Fraud of broker or his agent.
35. Conversion.
36. Repudiation or ratification of broker's acts.
37. Actions for accounting.
38. Actions for negligence or wrongful acts of broker.
  - (.5). In general.
  - (1). Right of action and defenses.
  - (2). Nature and form of action.
  - (3). Pleading.
  - (4). Evidence.
  - (5). Questions for jury.
  - (6). Instructions.
  - (7). Damages.
  - (8). Set-off and counterclaim.
  - (9). Verdict, findings, and judgment.

**65. BROKERS****V. COMPENSATION.**

39. Right to compensation in general.
40. Employment of broker.
41. Ratification of broker's acts.
42. Necessity of license.
43. Necessity of contract in writing.
  - (.5). In general.
  - (1). Under statute of frauds in general.
  - (2). Under special statutes relating to brokers.
  - (3). Sufficiency of writing.
44. Revocation of authority.
45. Abandonment of employment by broker.
46. Transactions effected without aid of broker.
47. Sufficiency of services of broker.
48. — In general.
49. — Performance of contract of employment.
  - (1). In general.
  - (2). Optional or provisional offers.
  - (3). Variance between contract tendered and the one authorized.
50. — Performance of services within time specified.
51. — Bringing parties together.
52. — Completion of negotiations.
53. — Procuring cause of contract or transaction.
54. — Ability and willingness of party procured to perform contract.
55. — Negotiations through other agents.
  - (1). In general.
  - (2). Contract or sale through other agent on different terms or for different price.
  - (3). Exclusive agency.
  - (4). Agreement to pay commissions if sale is made through another agency.
56. — Negotiations direct with principal.
  - (1). In general.
  - (2). Knowledge of broker's agency.
  - (3). Sale in which broker has been instrumental, or to one introduced or procured by broker, or with whom broker has negotiated.
57. — Contract or transaction negotiated different from that authorized.

**V. COMPENSATION.(Cont'd)**

- (1). In general.
- (2). Contract or sale by owner on different terms or for different price.
58. — Invalidity of contract or transaction negotiated.
59. Failure to complete contract or transaction negotiated.
60. — In general.
61. — Defect in principal's title.
  - (1). In general.
  - (2). Nature and effect of defect in title in general.
  - (3). Refusal of wife of principal to join in conveyance.
  - (4). Broker's knowledge of defect.
62. — Deficiency in quantity of land.
63. — Default or refusal of principal.
  - (1). In general.
  - (2). Provisions in contract of employment or contract of sale as affecting broker's right to commissions.
  - (3). Refusal to complete transaction after offer of other terms.
  - (4). Defect in title of other party.
  - (5). Tender of performance by purchaser.
64. — Default or refusal of party procured by broker.
  - (1). In general.
  - (2). Provisions in contract of employment or contract of sale as affecting broker's right to commissions.
  - (3). Refusal to complete transaction after offer of other terms.
65. Bad faith, fraud, or misconduct of broker.
  - (1). In general.
  - (2). Concealment of or misrepresentation as to price received or paid.
  - (3). Sale for inadequate price or price less than might have been procured.
  - (4). Representing adverse interest.
  - (5). Individual interest.
  - (6). Waiver of fraud or wrongful act.
66. Dividing or pooling commissions.
67. Commissions from both parties.

**65. BROKERS****V. COMPENSATION.**(Cont'd)

- (1). In general.
- (2). Knowledge of double employment.
- 68. Rate or amount of compensation.
- 69. — In general.
- 70. — Statutory regulation of commissions.
- 71. — Contracts as to compensation.
- 72. Reimbursement of advances, expenses, or losses.
- 73. Persons entitled.
- 74. Persons liable.
- 75. Payment.
- 76. Application of forfeited deposit.

**VI. LIEN.**

- 77. In general.

**VII. ACTIONS FOR COMPENSATION.**

- 78. Right of action.
- 79. Nature and form of action.
- 80. Defenses.
- 81. Parties.
- 82. Pleading.
  - (.5). In general.
  - (1). Declaration, complaint, or petition.
  - (2). Pleas or answer and affidavit of defense.
  - (3). Amendments.
  - (4). Issues, proof, and variance.
- 83. Evidence.
- 83.1. — In general.
- 84. — Presumptions and burden of proof.
  - (1). In general.
  - (2). Ability and willingness of proposed purchaser.
- 85. — Admissibility.
  - (1). In general.
  - (2). Evidence as to procuring cause of contract or transaction.
  - (3). Evidence of ability and willingness of party procured to perform.
  - (4). Evidence that sale was made by another.
  - (5). Evidence as to value or price of property subject of agency.
  - (6). Evidence of conversations or declarations.

**VII. ACTIONS FOR COMPENSATION.**(Cont'd)

- (7). Letters, documents, or books.
- (8). Evidence as to default or refusal of principal to complete contract.
- (9). Evidence of bad faith, fraud, or misconduct of broker.
- (10). Evidence of value of services.
- 86. — Weight and sufficiency.
  - (1). In general.
  - (2). Revocation of authority.
  - (3). Completion of negotiations.
  - (4). Procuring cause of contract or transaction.
  - (5). Ability or willingness of proposed purchaser to perform.
  - (6). Contract or transaction negotiated different from that authorized.
  - (7). Bad faith, fraud, or misconduct of broker.
  - (8). Amount of compensation.
- 87. Amount of recovery.
- 88. Trial.
  - (.5). In general.
  - (1). Questions for jury in general.
  - (2). Questions for jury as to employment of broker, construction of contract, or ratification of acts of broker.
  - (3). Questions for jury as to sufficiency of services of broker.
  - (4). Questions for jury as to failure to complete contract or transaction negotiated.
  - (5). Questions for jury as to bad faith, fraud or misconduct of broker.
  - (6). Questions for jury as to amount or value of services.
  - (7). Instructions in general.
  - (8). Instructions as to burden of proof.
  - (9). Instructions as to employment of broker, ratification of broker's acts, revocation of authority of broker, and abandonment of employment by broker.
  - (10). Instructions as to sufficiency of services of broker.
  - (11). Instructions as to failure to complete contract or transaction negotiated.

**65. BROKERS****VII. ACTIONS FOR COMPENSATION.(Cont'd)**

- (12). Instructions as to bad faith, fraud, or misconduct of broker.
- (13). Instructions as to amount or value of services.
- (14). Verdict or findings.
- 89. Judgment and execution.

**VIII. RIGHTS, POWERS, AND LIABILITIES AS TO THIRD PERSONS.**

- 91. Representation of principal in general.
- 92. Contracts in general.
- 93. Purchases, sales, and conveyances.
- 94. — In general.
- 95. — Warranties.
- 96. Deposits, collections, and payments.
- 97. Loans and securities.
- 98. Negotiable instruments.
- 99. Undisclosed agency or principal.
- 100. Unauthorized and wrongful acts in general.
- 101. Mistake or negligence of broker.
- 102. Misrepresentation or fraud of broker.
- 103. Repudiation or ratification of broker's acts.
- 104. Estoppel by broker's acts.
- 105. Notice to broker.
- 106. Actions by or against principals or brokers.

**67. BURGLARY****SUBJECTS INCLUDED**

- Breaking and entering buildings or other structures, or attempting to do so, with intent to commit a crime therein
- Nature and elements of the crimes and of degrees thereof
- Nature and extent of criminal responsibility therefor, and grounds of defense
- Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Entering without intent to commit other offense, see TRESPASS, FORCIBLE ENTRY AND DETAINER

**I. OFFENSES AND RESPONSIBILITY THEREFOR, ¶1-16.****II. PROSECUTION, ¶17-48.****III. SENTENCE AND PUNISHMENT, ¶49.****I. OFFENSES AND RESPONSIBILITY THEREFOR.**

- 1. Nature and elements of offenses.
- 2. — In general.
- 3. — Intent.
- 4. — Character of building.
- 5. — Situation of building.
- 6. — Occupancy of building.
- 7. — Ownership or possession of building.
- 8. — Time.
- 9. — Breaking and entry.
  - (.5). In general.
  - (1). What constitutes breaking.
  - (2). What constitutes entry.
  - (3). Breaking without entry, entry without breaking, and breaking after entry.
- 10. Degrees.
- 11. Attempts.
- 12. Possession of burglars' tools.
- 13. Defenses.
- 14. — In general.
- 15. — Consent of owner or occupant of building.
- 16. Persons liable.

**II. PROSECUTION.**

- 17. Indictment or information.
- 18. — In general.
- 19. — Intent.
- 20. — Description of building.
- 21. — Occupancy of building.
- 22. — Ownership or possession of building.
- 23. — Description and ownership of property in building or stolen from building.
- 24. — Time.
- 25. — Breaking and entry.

**69. CANCELLATION OF INSTRUMENTS****II. PROSECUTION.(Cont'd)**

- 26. — Attempts.
- 27. — Possession of burglars' tools.
- 28. — Issues, proof, and variance.
  - (1). In general.
  - (2). Intent.
  - (3). Breaking and entry.
  - (4). Time of committing offense.
  - (5). Description of building.
  - (6). Ownership, occupancy, or possession of building.
  - (7). Value, description, and ownership of property stolen.
- 29. Presumptions and burden of proof.
- 30. Admissibility of evidence.
- 31. — In general.
- 32. — Intent.
- 33. — Description, occupancy, and ownership or possession of building.
- 34. — Identity and ownership of property in building or stolen from building.
- 35. — Identity, presence, and acts of accused.
- 36. — Incriminating circumstances in general.
- 37. — Possession by accused of burglars' tools.
- 38. — Possession by accused of property stolen.
- 39. — Matters of defense.
- 40. Weight and sufficiency of evidence.
- 41. — In general.
  - (1). In general.
  - (2). Proof of corpus delicti.
  - (3). Intent.
  - (4). Breaking and entry.
  - (5). Time of committing offense.
  - (6). Identity of defendant.
  - (7). Identity and value of stolen property.
  - (8). Character and ownership of premises.
  - (9). Prosecution for possession of burglars' tools.
  - (10). Attempts.
- 42. — Effect of possession of property stolen.
  - (1). In general.
  - (2). Effect of possession not exclusive.

**II. PROSECUTION.(Cont'd)**

- (3). Effect of possession accompanied by other evidence.
- (4). Explanation of possession.
- 43. — Effect of possession of burglars' tools.
- 44. Trial.
  - 44.1. — In general.
- 45. — Questions for jury.
- 46. — Instructions.
  - (1). In general.
  - (2). Intent.
  - (3). Breaking and entry.
  - (4). Time of committing offense.
  - (5). Character, situation, and occupancy of premises.
  - (6). Owner's consent.
  - (7). Possession of stolen property.
  - (8). Explanation of possession.
- 47. — Verdict.

**III. SENTENCE AND PUNISHMENT.**

- 49. In general.

**69. CANCELLATION OF INSTRUMENTS****SUBJECTS INCLUDED**

Actions to compel annulment or abrogation of conveyances and contracts or other instruments in writing, and the cancellation or surrender of such instruments

Nature and scope of the remedy in general

What instruments may be so annulled, grounds of such actions and defenses thereto

Jurisdiction to decree such cancellation, surrender and the like and proceedings therefor, with incidental or alternative relief

Reinstatement of instruments cancelled

Judgments or decrees, and operation and effect thereof

Review of proceedings and costs in actions for such rescission or cancellation



**69. CANCELLATION OF INSTRUMENTS****SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Actions to rescind sale of personal property, see **SALES**

Actions to rescind sale of real property, see **REAL PROPERTY CONVEYANCES**

Clouds on titles, actions for removal of, see **QUIETING TITLE**

Fraud as to creditors, subsequent purchasers, etc., setting aside conveyances for, see **FRAUDULENT CONVEYANCES**

Reformation of instruments in writing, actions for, see **REFORMATION OF INSTRUMENTS**

Substantive law as to grounds of invalidity of conveyances or contracts or as to defenses to actions thereon, such as want of consideration, mistake or fraud, see **REAL PROPERTY CONVEYANCES, CONTRACTS**, and other specific topics relating to particular classes of conveyances and contracts

**I. RIGHT OF ACTION AND DEFENSES,**

⌘1–31.

**II. PROCEEDINGS AND RELIEF,**

⌘32–63.

**I. RIGHT OF ACTION AND DEFENSES.**

1. Nature and scope of remedy.
2. Right to cancellation.
3. — In general.
4. — Invalidity of instrument.
5. — Unconscionableness, improvidence, or hardship.
6. — Performance or discharge of obligation.
7. — Executed contracts.
8. — Injury sustained or anticipated.
9. Adequate remedy at law.
10. — In general.
11. — Pendency of proceedings at law.
12. — Void instruments.
13. — Defense to action on instrument.
14. — Recovery of consideration or of property conveyed.
15. — Recovery of damages.
16. — Insolvency of defendant.
17. Ratification.
18. Estoppel or waiver.
19. Conditions precedent.

**I. RIGHT OF ACTION AND  
DEFENSES.(Cont'd)**

20. — In general.
21. — Performance by plaintiff.
22. — Notice and demand.
23. — Restoration of former status of parties.
24. — Restoration of consideration or benefit.
  - (1). In general.
  - (2). Consideration for deed or mortgage.
  - (3). Contracts of sale of land.
  - (4). Contracts of exchange of lands.
25. Defenses.
26. Persons entitled to cancellation.
27. — In general.
28. — Parties in pari delicto.
29. Persons as to whom instruments may be canceled.
30. — In general.
31. — Bona fide purchasers.

**II. PROCEEDINGS AND RELIEF.**

32. Form of remedy.
33. Jurisdiction and venue.
34. Limitations and laches.
  - (.5). In general.
  - (1). Laches in general.
  - (2). Accrual of cause of action.
  - (3). Excuse for delay.
  - (4). Statutory limitations.

*See also LIMITATION OF ACTIONS.*
35. Parties.
  - (1). In general.
  - (2). Parties plaintiff.
  - (3). Parties defendant.
36. Pleading.
- 36.1. — In general.
37. — Bill, complaint, or petition.
  - (1). In general.
  - (2). Excuse for laches.
  - (3). Setting out and description of instrument.
  - (4). Offer to restore consideration or benefits.
  - (5). Averment of ground of cancellation in general.
  - (6). Fraud in general.

**70. CARRIERS****II. PROCEEDINGS AND RELIEF.**(Cont'd)

- (7). Incapacity, duress, and undue influence.
- (8). Performance or breach of contract.
- 38. — Cross-bill, cross-complaint, or counterclaim for cancellation.
- 39. — Plea or answer.
- 40. — Reply.
- 41. — Demurrer.
- 42. — Amended and supplemental pleadings.
- 43. — Issues, proof, and variance.
- 44. Evidence.
- 44.1. — In general.
- 45. — Presumptions and burden of proof.
- 46. — Admissibility.
- 47. — Weight and sufficiency.
- 48. Trial or hearing.
- 49. — In general.
- 50. — Questions for jury.
- 51. — Instructions.
- 52. — Verdict.
- 53. — Trial and findings by court or referee.
- 54. Relief awarded.
- 55. — In general.
- 56. — Cancellation, surrender, or conveyance.
- 57. — Alternative, additional, or incidental equitable relief.
- 58. — Recovery of consideration or of damages.
- 59. — Relief to defendant.
- 60. Judgment or decree and enforcement thereof.
- 61. Appeal.
- 62. Costs.
- 63. Effect of cancellation or surrender.

**70. CARRIERS****SUBJECTS INCLUDED**

Regulation and conduct of the business of transportation of goods and passengers by common or private carriers

Matters incidental thereto, such as the operation of sleeping cars, freight lines, collection and transportation of money by express companies

Rights, duties and liabilities of those engaged in any such business, as to the public and as to individuals, in respect of the persons and property carried

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Commerce, regulation of, see **COMMERCE**  
Communications media, see **TELECOMMUNICATIONS**

Gas pipe lines, see **GAS**

Injuries to licensees and trespassers on carriers' property, liabilities for, see **RAILROADS, SHIPPING** and other specific topics

Interstate Commerce Commission, regulation by, see **COMMERCE**

Oil pipe lines as easements, see **EASEMENTS**

Particular classes of carriers in relations or capacities other than transportation of goods and passengers, see **CORPORATIONS AND BUSINESS ORGANIZATIONS, AUTOMOBILES, AVIATION, FERRIES, LABOR AND EMPLOYMENT, RAILROADS, URBAN RAILROADS, SHIPPING**

Regulation of—

Air carriers, see **AVIATION**

Motor carriers, see **AUTOMOBILES**

Railroads, see **RAILROADS**

Water transportation, see **FERRIES, SHIPPING**

**I. CONTROL AND REGULATION OF COMMON CARRIERS, ¶1-38.**

(A) **IN GENERAL, ¶1-22.**

(B) **INTERSTATE AND INTERNATIONAL TRANSPORTATION, ¶23-38.**

**II. CARRIAGE OF GOODS, ¶39-202.**

(A) **DELIVERY TO CARRIER, ¶39-45.**

(B) **DOCUMENTS OF TITLE AND CONTRACTS, ¶46-69.**

(C) **CUSTODY AND CONTROL OF GOODS, ¶70-76.**

(D) **TRANSPORTATION AND DELIVERY BY CARRIER, ¶77-94.**

**70. CARRIERS****II. CARRIAGE OF GOODS—Cont'd**

- (E) DELAY IN TRANSPORTATION OR DELIVERY, ⚭95–106.
- (F) LOSS OF OR INJURY TO GOODS, ⚭107–137.
- (G) CARRIER AS WAREHOUSEMAN, ⚭138–146.
- (H) LIMITATION OF LIABILITY, ⚭147–168.
- (I) CONNECTING CARRIERS, ⚭169–187.
- (J) CHARGES, ⚭188–196.5.
- (K) LIENS, ⚭197.
- (L) INJURY TO CARRIER, ⚭197.1.
- (M) DISCRIMINATION AND OVERCHARGE, ⚭198–202.

**III. CARRIAGE OF LIVE STOCK,**  
⚭203–231.**IV. CARRIAGE OF PASSENGERS,**  
⚭233–417.

- (A) RELATION BETWEEN CARRIER AND PASSENGER, ⚭233–248.
- (B) FARES, TICKETS, AND SPECIAL CONTRACTS, ⚭249–261.
- (C) PERFORMANCE OF CONTRACT OF TRANSPORTATION, ⚭262–279.
- (D) PERSONAL INJURIES, ⚭280–322.
- (E) CONTRIBUTORY AND COMPARATIVE NEGLIGENCE, ⚭323–349.
- (F) EJECTION OF PASSENGERS AND INTRUDERS, ⚭350–386.
- (G) PASSENGERS' EFFECTS; BAGGAGE, ⚭387–417.

**I. CONTROL AND REGULATION OF COMMON CARRIERS.****(A) IN GENERAL.**

1. Power to control and regulate.
2. Constitutional and statutory provisions.
3. Who are carriers.
4. Who are common carriers.
5. Companies, persons, or instrumentalities affected by regulations.
6. Incorporation and organization of companies.
7. Franchises and powers.
8. Licenses and taxes.
9. Reports and statements.
10. Supervision by public officers in general.
11. Conduct of business in general.
12. Charges.

*Includes statutory and official regulation only. Contractual and other non-regulatory matters relating to charges for carriage of goods, see II(J).*

- (.5). In general.
  - (1). Scope and validity of regulations in general.
  - (2). Local and through rates.
  - (3). Long and short haul.
  - (4). Passenger rates.
  - (5). Reasonableness in general.
  - (6). Consideration of other lines or entire system in determining reasonableness of local rates.
  - (7). Evidence as to reasonableness.
  - (8). Raising rates lowered for purpose of competition.
  - (9). Conditions in grant of franchise and agreements with municipalities.
  - (10). Transfers to connecting lines of same company.
  - (11). Proceedings before officers and commissions.
13. Preferences and discriminations.
  - (1). In general.
  - (2). What constitutes discrimination.
  - (3). Circumstances justifying discrimination.
14. Exclusive privileges.
15. Connections with and facilities to other carriers.
16. Use of carrier's premises.
17. Combinations of carriers.
18. Proceedings to enforce or to prevent enforcement of regulations.
  - (1). In general.
  - (2). Appeal from orders of officer or board.
  - (3). Actions to enforce or set aside decisions of officer or board.
  - (4). Proceedings to enforce regulations as to connections with or facilities to other carriers.
  - (5). Remedies of persons aggrieved by discriminations.
  - (6). Injunction.
19. Damages for violations of regulations.
20. Penalties for violations of regulations.
  - (1). In general.
  - (2). Carriage of passengers in general.
  - (3). Discrimination.

**70. CARRIERS****I. CONTROL AND REGULATION OF  
COMMON CARRIERS.(Cont'd)**

- (4). Overcharge.
- (5). Failure to furnish cars.
- (5.5). Carriage of live stock.
- (6). Connections with and facilities to other carriers.
- (7). Amount and computation of penalty.
- (8). Persons entitled to sue.
- (9). Jurisdiction and venue.
- (10). Parties, pleading, and process.
- (11). Evidence.
- (12). Trial and instructions.
- 21. Offenses by carriers or their agents.
  - (1). In general.
  - (2). Discrimination and overcharge.
  - (3). Recommendation of railroad commission.
  - (4). Indictment.
  - (5). Trial.
- 22. Offenses by persons dealing with carriers.

**(B) INTERSTATE AND INTERNATIONAL  
TRANSPORTATION.**

- 23. Statutory provisions.
- 24. Subjects of regulations.
- 25. Carriage of particular articles.
- 26. Charges in general.
- 27. Special rates.
- 28. Charges for long and short hauls.
- 29. Pooling or dividing freights or earnings.
- 30. Schedules of rates.
- 31. Change of rates.
- 32. Preferences and discriminations.
  - (1). In general.
  - (2). What constitutes preference or discrimination.
    - (2.1). — In general.
    - (2.2). — Distribution of cars.
    - (2.3). — Charges in general.
    - (2.4). — Rebates.
    - (2.5). — Switching and switching charges.
    - (2.6). — Compensating shippers for services.
    - (2.7). — Carriage of live stock.
    - (2.8). — Carriage of passengers.
  - (3). Justification.
- 33. Facilities to connecting lines.

**I. CONTROL AND REGULATION OF  
COMMON CARRIERS.(Cont'd)**

- 34. Judicial remedies and review.
- 35. Contracts in violation of regulations.
- 36. Damages for violations of regulations.
- 37. Penalties for violations of regulations.
  - (1). In general.
  - (2). Carriage of live stock.
  - (2.1). — In general.
  - (3). — Connecting carriers.
  - (4). — Amount and computation.
  - (5). Actions.
  - (6). Pleading.
  - (7). Evidence.
  - (8). Trial.
- 38. Offenses.
  - (1). In general.
  - (2). Carriage of live stock.
  - (3). Discrimination and overcharge.
  - (4). Jurisdiction and venue.
  - (5). Indictment and information.
  - (6). Evidence.
  - (7). Trial.
  - (8). Punishment.

**II. CARRIAGE OF GOODS.****(A) DELIVERY TO CARRIER.**

- 39. Duty of carrier to receive and transport goods.
- 40. Duty to furnish shipping facilities or means of transportation.
- 41. Acts constituting delivery to and acceptance by carrier.
- 42. Effect of delivery and acceptance.
- 43. Failure or refusal to receive goods.
- 44. Failure or refusal to furnish shipping facilities or means of transportation.
- 45. Actions for refusal to receive or transport goods, or furnish facilities.

**(B) DOCUMENTS OF TITLE AND CONTRACTS.**

- 46. What law governs.
- 46.5. Duty to give bill of lading or receipt.
- 47. Authority of agents and employees.
  - (1). In general.
  - (2). Authority to make contract to carry goods beyond carrier's line.
- 48. Affixing revenue stamps to bill of lading or receipt.

**70. CARRIERS****II. CARRIAGE OF GOODS.(Cont'd)**

- 49. Validity of bill of lading or receipt.
- 50. Construction and operation of bill of lading.
- 51. — In general.
- 52. — As a receipt.
  - (1). In general.
  - (2). Effect as admission in respect to quantity or condition of goods.
  - (3). Effect of custom.
- 53. — As a contract.
- 54. Negotiability and transfer of bill of lading.
  - 54.1. — In general.
- 55. — Negotiability and assignability.
- 56. — Indorsement or other transfer.
- 57. — Rights of transferee as against carrier.
- 58. — Rights and liabilities of transferee as to persons other than carrier.
- 59. — Bona fide purchasers.
- 60. Receipts for goods.
- 61. Contracts for transportation of goods.
  - 61.1. — In general.
- 62. — Requisites and validity.
- 63. — Construction and operation.
- 64. — Performance or breach.
- 65. Contracts for means of transportation.
  - 65.1. — In general.
- 66. — Requisites and validity.
- 67. — Performance or breach.
- 68. Modification, merger, or rescission.
- 69. Actions for breach of contract.
  - (1). In general.
  - (2). Pleading.
  - (3). Evidence.
  - (4). Damages.
  - (5). Trial.

**(C) CUSTODY AND CONTROL OF GOODS.**

- 70. Title to goods.
- 71. Rights of carrier.
- 72. Rights of consignor and consignee in general.
- 73. Change of destination.
- 74. Stoppage in transitu.
- 75. Seizure under legal process.
- 76. Actions by or against carriers in respect of goods.

**(D) TRANSPORTATION AND DELIVERY BY CARRIER.**

- 77. Duties as to transportation in general.
- 78. Performance of special contract.
- 79. Route.
- 80. Destination.
- 81. Entry in custom house.
- 82. To whom delivery may be made.
- 83. Presentation of bill of lading or shipping receipt.
- 84. Place of delivery.
- 85. Notice to consignee.
- 86. Duties of carrier in making delivery.
- 87. Duties of consignee or owner as to delivery.
- 88. Acts constituting delivery.
- 89. Failure or refusal of consignee to receive goods.
- 90. Delivery of goods shipped C.O.D.
- 91. Liability for failure or refusal to deliver.
- 92. Liability as to goods seized under legal process.
- 93. Liability for misdelivery.
- 94. Actions for failure to deliver or misdelivery.
  - (.5). In general.
  - (1). Conditions precedent.
  - (1.5). Jurisdiction and venue.
  - (2). Parties and pleading.
  - (3). Evidence.
  - (4). Damages.
  - (5). Trial and judgment.

**(E) DELAY IN TRANSPORTATION OR DELIVERY.**

- 95. Diligence required of carrier.
- 96. Time of transportation and delivery in general; usage or course of business.
- 97. Perishable goods.
- 98. Liability of carrier for delay.
- 99. Excuses for delay by carrier.
- 100. Demurrage, and liability of consignee or owner for delay.
  - (.5). In general.
  - (1). Right of carrier to charge demurrage, and persons liable.
  - (2). Notice of regulations.
  - (3). Lien for demurrage.
- 101. Actions for delay.
  - 101.1. — In general.
- 102. — Nature and form.

**70. CARRIERS****II. CARRIAGE OF GOODS.(Cont'd)**

- 103. — Pleading.
- 104. — Evidence.
- 105. — Damages.
  - (1). In general.
  - (2). Special damage dependent on knowledge of circumstances.
  - (3). Excessive damages.
- 106. — Trial.

**(F) LOSS OF OR INJURY TO GOODS.**

- 107. Care required of carrier in general.
- 108. Nature of liability as common carrier.
- 109. What law governs.
- 110. Character and value of goods.
- 111. Condition of goods.
- 112. Nature and validity of contract for transportation.
- 113. Commencement of liability.
- 114. Termination of liability.
- 115. Acts or omissions constituting negligence by carrier or third person in general.
- 116. Deviation or delay.
- 117. Mode or means of transportation.
- 118. Negligence of agents or servants.
- 119. Act of God, vis major, or inevitable accident.
- 120. Inherent defects in goods.
- 121. Contributory negligence of owner.
- 122. Duties after disaster.
- 123. Proximate cause of loss or injury.
- 124. Extent of liability.
- 124.5. Deduction of unpaid charges.
- 125. Effect of insurance.
- 125.5. Claims for damages.
- 126. Actions for loss or injury.
- 126.1. — In general.
- 127. — Nature and form.
- 128. — Rights of action.
- 129. — Defenses.
- 130. — Jurisdiction and venue.
- 131. — Parties and pleading.
- 132. — Presumptions and burden of proof.
- 133. — Admissibility of evidence.
- 134. — Sufficiency of evidence.
- 135. — Damages.
- 136. — Questions for jury.
- 137. — Instructions, verdict and findings.

**(G) CARRIER AS WAREHOUSEMAN.**

- 138. Change in nature of liability of carrier in general.
- 139. Goods awaiting transportation.
- 140. Goods awaiting delivery.
- 141. Special contracts for storage.
- 142. Duties of carrier as warehouseman.
- 143. Acts or omissions constituting negligence.
- 144. Proximate cause of loss.
- 145. Extent of liability.
- 146. Actions involving liability as warehouseman.

**(H) LIMITATION OF LIABILITY.**

- 147. Nature of right to limit liability.
- 148. What law governs.
- 149. Liabilities subject to limitation.
- 149.1. — In general.
- 150. — Negligence or misconduct.
- 151. Mode or form of limitation.
- 151.1. — In general.
- 152. — Notice.
- 153. — Bill of lading or shipping receipt.
- 154. Consideration.
- 155. Assent of consignor or owner.
- 156. Operation and effect of limitation in general.
  - (1). In general.
  - (2). Loss caused by negligence or wrongful act of carrier.
- 157. Limitation to liability of forwarder or warehouseman.
- 158. Limitation of amount of liability.
  - (1). In general.
  - (2). Limitation of amount where value is not disclosed.
  - (3). Loss caused by negligence or wrongful act of carrier.
- 159. Requirement of notice of loss.
  - (1). In general.
  - (2). Limitation of time for presenting claim.
  - (3). Waiver of notice of claim or defects therein.
  - (4). Loss caused by negligence or wrongful act of carrier.
- 160. Limitation of time to sue.
- 161. Limitation of liability as ground of defense.

**70. CARRIERS****II. CARRIAGE OF GOODS.(Cont'd)**

- 161.1. — In general.
- 162. — Pleading.
- 163. — Presumptions and burden of proof.
- 164. — Admissibility of evidence.
- 165. — Sufficiency of evidence.
- 166. — Questions for jury.
- 167. — Instructions.
- 168. — Verdict and findings.

**(I) CONNECTING CARRIERS.**

- 169. Who are connecting carriers.
- 170. Duties in general.
- 171. Traffic arrangements between carriers.
- 172. Receipt of goods for transportation beyond carrier's line.
- 173. Special contracts for through transportation.
- 174. Delivery to succeeding carrier.
- 175. Delivery to consignee.
- 176. Delay in transportation or delivery.
- 177. Loss of or injury to goods.
  - (1). In general.
  - (2). Effect of agreements between connecting lines and joint liability.
  - (3). Liability of initial carrier.
  - (4). Liability of intermediate or last carrier.
- 178. Carrier as forwarder or warehouseman.
- 179. Transportation of cars or other vehicles of other carrier.
- 180. Limitation of liability.
  - (1). In general.
  - (2). Power to limit liability to carrier's own line.
  - (3). Operation and effect of limitation.
  - (4). Limitation to liability of forwarder or warehouseman.
  - (5). Right of subsequent carrier to benefit of limitation by first carrier.
  - (6). Effect of violation of contract by carrier.
- 181. Actions against connecting carriers.
- 181.1. — In general.
- 182. — Jurisdiction and venue.
- 183. — Parties.
- 184. — Pleading.
- 185. — Evidence.

**II. CARRIAGE OF GOODS.(Cont'd)**

- (.5). In general.
- (1). Presumptions and burden of proof.
- (2). Admissibility of evidence.
- (3). Sufficiency of evidence.
- 186. — Damages.
- 187. — Trial.

**(J) CHARGES.**

- 188. Rights of carrier in general.
- 189. Rates of freight.
- 190. Advances for charges and expenses.
- 191. Charges for storage.
- 192. Special contracts as to amount of charges.
- 192.5. Rebates.
- 193. Rights of connecting carriers.
- 194. Persons liable for charges.
- 195. Payment or tender.
- 196. Actions for charges.
- 196.5. Actions for rebates.

**(K) LIENS.**

- 197. Lien for charges.
  - (1). In general.
  - (2). Goods carried without authority.
  - (3). Extent of lien.
  - (4). Priority of lien.
  - (5). Lien of connecting carrier.
  - (6). Waiver or discharge.
  - (7). Enforcement.

**(L) INJURY TO CARRIER.**

- 197.1. Liability for injury to carrier.

**(M) DISCRIMINATION AND OVERCHARGE.**

- 198. Rights and liabilities of carrier in general.
- 199. Unlawful discrimination.
- 200. Excessive charges.
- 201. Actions for discrimination.
- 202. Actions for excess of charges paid.

**III. CARRIAGE OF LIVE STOCK.**

- 203. What law governs.
- 204. Statutory regulation.
- 205. Nature of carrier's duties and liabilities in general.

## 70. CARRIERS

## III. CARRIAGE OF LIVE STOCK.(Cont'd)

- 206. Duty to receive for transportation.
- 207. Special contract for transportation.
  - (1). In general.
  - (2). Validity of contract.
  - (3). Modification or merger.
- 208. Duties in respect to transportation.
- 208.1. — In general.
- 209. — Mode or means of transportation.
- 210. — Loading and unloading.
- 211. — Food, water, and rest.
- 212. Duties in respect to delivery.
- 213. Delay in transportation or delivery.
- 214. Loss or injury.
- 215. — In general.
- 215.1. — Live stock awaiting transportation or delivery.
- 216. — Inherent qualities, propensities, or defects.
- 217. — Contributory negligence of owner.
  - (1). In general.
  - (2). Proximate cause of loss or injury.
- 217.5. Claims for damages.
- 218. Limitation of liability.
  - (.5). In general.
  - (1). Power to limit liability in general.
  - (2). Power to limit extent of liability.
  - (3). Power to impose conditions with regard to giving notice of loss.
  - (4). Power to impose duties on shipper as to care of stock.
  - (5). Validity of contract granting exemption.
  - (6). Operation and effect of limitations in general.
  - (7). Operation and effect of limitation of amount of liability.
  - (8). Operation and effect of stipulations requiring shipper to load, unload, and care for stock.
  - (9). Operation and effect of stipulations requiring examination of cars by shipper.
  - (10). Operation and effect of stipulation for notice of claim for damages.
  - (11). Waiver.
- 219. Connecting carriers.
  - (1). In general.
  - (2). Delivery to succeeding carrier.

## III. CARRIAGE OF LIVE STOCK.(Cont'd)

- (3). Food, water, and rest.
- (4). Delay in transportation or delivery.
- (5). Loss or injury.
- (6). Power to limit liability.
- (7). Validity of contract limiting liability.
- (8). Operation and effect of limitation.
- 220. Actions against carriers of live stock.
- 220.1. — In general.
- 221. — Nature and form.
- 222. — Rights of action.
- 223. — Defenses.
- 224. — Jurisdiction and venue.
- 225. — Time to sue, and limitations.  
*See also LIMITATION OF ACTIONS.*
- 226. — Parties.
- 227. — Pleading.
  - (.5). In general.
  - (1). Complaint.
  - (2). Answer and reply.
  - (3). Issues, proof, and variance.
- 228. — Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof in general.
  - (2). Limitation of liability.
  - (3). Admissibility of evidence in general.
  - (4). Limitation of liability.
  - (5). Weight and sufficiency of evidence in general.
  - (6). Limitation of liability.
- 229. — Damages.
  - (.5). In general.
  - (1). Elements of damage.
  - (2). Measure of damages in general.
  - (3). Special damage dependent on knowledge of circumstances.
  - (4). Connecting carriers.
  - (5). Amount awarded.
- 230. — Trial.
  - (.5). In general.
  - (1). Questions for jury in general.
    - (1.1). — In general.
  - (2). — Care of stock awaiting transportation or delivery.
  - (3). — Delay in transportation.



**70. CARRIERS****III. CARRIAGE OF LIVE STOCK.(Cont'd)**

- (4). — Care of stock in transit.
  - (5). — Limitation of liability.
  - (6). — Liability of connecting carrier.
  - (7). Instructions.
  - (7.1). — In general.
  - (8). — Delay in transportation.
  - (9). — Care of stock by carrier.
  - (10). — Limitation of liability.
  - (11). — Liability of connecting carriers.
  - (12). — Damages.
  - (13). Verdict and findings.
231. — Judgment.

**IV. CARRIAGE OF PASSENGERS.****(A) RELATION BETWEEN CARRIER AND PASSENGER.**

- 233. In general; nature of the relation.
- 234. What law governs.
- 235. Who are carriers.
- 235.1. — In general.
- 235.5. — Elevators, escalators, etc., operators of.
- 236. Duty to receive and transport passengers.
- (1). In general.
- (1.1). Dangerous, threatening, unruly, or intoxicated persons.
- (1.2). Overbooking.
- (2). Actions for failure to furnish transportation.
- 237. Who are passengers.
- 237.1. — In general.
- 245. — Pleading and evidence.
- 247. Commencement and termination of relation.

**(B) FARES, TICKETS, AND SPECIAL CONTRACTS.**

- 249. Fares, charges, and tickets in general.
- 253.5. Passes.
- 257. Excessive and unauthorized charges.
- 258. Special contracts for transportation.

**(C) PERFORMANCE OF CONTRACT OF TRANSPORTATION.**

- 262. Duties as to transportation in general.
- 262.5. Accommodations for disabilities.

**IV. CARRIAGE OF PASSENGERS.(Cont'd)**

- 269. Connecting carriers; changes and transfers.
- 273. Actions arising out of breach of contract.
- 273.1. — In general.
- 276. — Evidence.
- 277. — Damages.

**(D) PERSONAL INJURIES.**

- 280. Care required and liability of carrier in general.
- (1). In general.
- (1.1). Air carriers.
- (1.2). Motor carriers; taxicabs and buses.
- (3). Railroads and urban railroads.
- (4). Elevators, escalators, etc.
- 281. Care to persons under disability; children.
- 282. Persons to whom carrier is liable; existence of relation.
- 283. Acts or omissions of carrier's employees.
- (1). In general.
- (3). Assault or personal violence.
- 284. Acts of fellow passengers or third persons.
- 285. Acts of God, vis major, or inevitable accident.
- 286. Condition and use of premises, station, or terminal.
- 287. Taking up passengers.
- (1). In general.
- (4). Duty to assist passenger in boarding.
- (5). Starting conveyance prematurely or allowing insufficient time to board.
- (6). School children.
- 288. Sufficiency and safety of means of transportation.
- 288.1. — In general.
- 289. — Vehicles, buses, and taxicabs.
- 289.5. — Aircraft.
- 290. — Railroads and urban railroads.
- 293. — Elevators, escalators, etc.
- 294. Management of conveyances.
- 295. — In general.
- 295.1. — Air carriers.
- 295.2. — Motor carriers; buses.
- 295.3. — Acts in emergencies.

## 70. CARRIERS

## IV. CARRIAGE OF PASSENGERS.(Cont'd)

- 298. — Sudden jerks and jolts.
- 300. — Collision.
- 302. Protection of passengers from incidental dangers.
  - (1). In general; foreign objects or debris.
  - (3). Injuries caused by opening or shutting door.
- 303. Setting down passengers.
  - (1). In general.
  - (6). Duty to provide safe place and means for alighting.
  - (7). Duty to warn passenger of dangers.
  - (8). Duty to assist passenger in alighting.
  - (9). Injuries received after alighting from conveyance.
  - (10). School children.
- 304. Care as to persons accompanying passengers.
- 305. Proximate cause of injury.
  - (1). In general.
  - (4). Management of conveyances.
  - (6). Negligence of third person contributing to injury.
- 306. Companies or persons liable.
  - Excludes carrier's liability for acts or omissions of employees, other passengers, or third persons, see ¶283, 284.*
  - (1). In general.
  - (5). Government, and immunity and waiver thereof, in general.
  - (6). Transportation related to schools.
- 307. Limitation of liability.
  - (1). In general.
  - (1.5). Warsaw Convention in general.
  - (2). Power to limit liability for injuries to persons riding free or at reduced rates.
  - (4). Validity of contract and assent of passenger thereto.
  - (6). Operation and effect of limitation.
    - (6.1). — In general.
  - (7). — Nature of injury.
  - (8). — Time limitations.
- 308. Connecting carriers.
- 309. Actions for injuries.
- 309.1. — In general.
- 310. — Nature and form.

## IV. CARRIAGE OF PASSENGERS.(Cont'd)

- 311. — Rights of action and defenses.
- 312. — Jurisdiction and venue.
- 314. — Pleading.
- 315. — Issues, proof, and variance.
- 316. — Presumptions and burden of proof.
  - (1). In general.
  - (1.5). Res ipsa loquitur and presumption or inference of negligence in general.
  - (3). Where injury is caused by sudden jerks or by suddenly or prematurely starting or stopping conveyance.
  - (4). Where injuries are caused by collision.
  - (7). Machinery or instrumentalities, and defects therein.
  - (7.5). Injuries to aircraft passengers.
  - (10). Injuries due to elevators, escalators, etc.
- 317. — Admissibility of evidence.
  - (1). In general.
  - (5). Condition of conveyances and appliances.
  - (8). Management of conveyances.
  - (9). Other accidents or similar transactions.
  - (11). Rules of carrier.
- 318. — Sufficiency of evidence.
  - (1). In general.
  - (2). As to negligence in respect to condition of carrier's premises.
  - (3). As to negligence with respect to means of transportation.
  - (4). As to negligence in management of conveyances in general.
  - (7). As to negligence causing collision.
  - (8). As to negligence in taking up or setting down passengers.
  - (12). As to companies or persons liable for injuries.
- 319. — Damages.
  - Compensatory damages for personal injuries, see DAMAGES.*
- 320. — Questions for jury.
  - (1). In general.
  - (6). Acts of fellow passengers or third persons.
  - (7). Condition and use of carrier's premises.

**70. CARRIERS****IV. CARRIAGE OF PASSENGERS.(Cont'd)**

- (8). Taking up passengers.
  - (14). Condition of elevators, escalators, etc.
  - (15). Management of conveyances in general.
  - (19). Sudden lurches, jerks, or jolts.
  - (21). Collision.
  - (23). Management of elevators, escalators, etc.
  - (24). Protection of passengers from incidental dangers.
  - (25). Setting down passengers.
  - (30). Proximate cause of injury.
  - 321. — Instructions.
    - (1). In general.
    - (9). Management of conveyances.
    - (14). Taking up or setting down passengers.
    - (19). Proximate cause of injury.
    - (21). Presumptions and burden of proof.
    - (23). Conformity to pleadings, issues, and proof.
  - 322. — Verdict and findings.
- (E) CONTRIBUTORY AND COMPARATIVE NEGLIGENCE.**
- 323. Contributory and comparative negligence, and assumption of risk, in general.
  - 329. In transit.
  - 333. Leaving conveyance.
  - 334. Disobedience to rules, contract, direction or warning.
  - 336. Acts by permission or direction of carrier's employees.
  - 337. Negligence as to incidental dangers.
  - 338. Acts in emergencies.
  - 339. Proximate cause of injury.
  - 340. Injury avoidable by care on part of carrier.
  - 341. Willful injury by carrier's employees.
  - 342. Actions.
    - 342.1. — In general.
  - 343. — Pleading.
  - 344. — Evidence.
  - 347. — Questions for jury.
  - 348. — Instructions.
  - 349. — Verdict and findings.

**(F) EJECTION OF PASSENGERS AND INTRUDERS.**

- 350. Rights and liabilities of carrier.
- 375. Actions.

**(G) PASSENGERS' EFFECTS; BAGGAGE.**

- 387. Transportation in general.
- 397. Loss or injury.
- 404. Carrier as warehouseman.
- 405. Limitation of liability.
  - (1). In general.
  - (2). Mode and form of limitation; tariffs and air carrier conventions.
  - (3). Notice and assent; provisions in ticket, check, or receipt.
  - (4). Operation and effect of limitation.
- 406. Connecting carriers.
- 407. Charges and liens.
- 408. Actions.
  - (1). In general.
  - (4). Evidence.
  - (5). Damages.
  - (6). Trial.

**71. CEMETERIES****SUBJECTS INCLUDED**

- Lands used for burial of the dead, whether in churchyards or other places, and regulations relating thereto
- Organization, franchises and powers of companies formed to provide and maintain such places
- Rights, duties and liabilities of such companies and of purchasers of lots or other rights or privileges in respect of property

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Burial, personal rights, duties and liabilities, see DEAD BODIES
- Decedents' estates, liabilities of, see EXECUTORS AND ADMINISTRATORS
- Sanitary regulations, see HEALTH
- Zoning restrictions, see ZONING AND PLANNING

**73. CERTIORARI**

1. Power to establish and regulate.
2. Lands constituting cemeteries.
3. Statutory and municipal regulations.
4. Establishment by municipalities.
5. Companies and associations.
6. Location.
7. — In general.
8. — Consent of adjacent landowners.
9. — Consent of public authorities.
10. Acquisition of and title to lands.
- 10.1. — In general.
11. — Mode of acquiring lands.
12. — Title and rights acquired.
13. — Power to sell or mortgage or lease.
14. — Abandonment.
15. Title and rights of owners of lots in general.
16. Right of burial.
17. Care of grounds, lots, and graves.
18. Tombstones and monuments.
19. Trespasses.
20. — In general.
21. — Disinterments.
22. Offenses.

**72. CENSUS****SUBJECTS INCLUDED**

Enumeration of inhabitants of the country or state and collection of statistics of their condition, property, commerce, etc., by public authority

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Congress and state legislatures, apportionment of representatives according to population, see STATES, UNITED STATES  
Federal direct taxes, apportionment among the states, see INTERNAL REVENUE

1. United States census.
- 1.1. — In general.
2. — Constitutional and statutory provisions.

3. — Officers.
4. — Making enumeration.
5. — Refusal to furnish information.
6. — Making returns.
7. — Compilation and publication of returns.
8. State census.
9. Municipal census.

**73. CERTIORARI****SUBJECTS INCLUDED**

Review by superior courts of judicial action of inferior tribunals or officers, in statutory or other proceedings not subjects of appeal or writ of error, etc., by removal and examination of records of such proceedings for correction of errors and irregularities therein

Statutory writ of review performing the same function

Nature and scope of the remedy in general; in what cases and as to what proceedings review is allowed

Grounds for, jurisdiction to grant and proceedings to obtain such review

Requisites, issuance and effect of writs and other process for such review

Quashing or dismissing such writs

Returns thereto and proceedings thereon, hearing and determination thereof and effect of decisions thereon

Review of the proceedings and costs

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Criminal prosecutions, review of proceedings, see CRIMINAL LAW

Federal courts, review under statutes or rules of court, see FEDERAL COURTS

Justices of the peace, review of proceedings before, see JUSTICES OF THE PEACE, CRIMINAL LAW

Particular forms of action or proceedings other than actions, review by certiorari, see CONTEMPT, EMINENT DOMAIN, HA-

**73. CERTIORARI**

BEAS CORPUS, MANDAMUS and other specific topics

Particular subjects, review of proceedings relating to, and especially particular administrative proceedings, see ADMINISTRATIVE LAW AND PROCEDURE, EMINENT DOMAIN, EXECUTORS AND ADMINISTRATORS, MUNICIPAL CORPORATIONS and other specific topics

United States Supreme Court, certiorari in, see FEDERAL COURTS

**I. NATURE AND GROUNDS,** ¶1–34.

**II. PROCEEDINGS AND DETERMINATION,** ¶35–72.

**I. NATURE AND GROUNDS.**

1. Nature and scope of remedy in general.
2. Constitutional and statutory provisions.
3. Availability of relief in original proceeding.
4. Existence of other remedy in general.
5. Existence of remedy by appeal or writ of error.
  - (1). In general.
  - (2). Inadequacy of remedy by appeal or writ of error.
6. Loss of right to other remedy.
7. Recourse to or pendency of other proceeding.
8. Adequacy of remedy by certiorari.
9. Discretion as to grant of writ.
10. Successive writs or proceedings.
11. Decisions and proceedings of courts, judges, and judicial officers.
  - 11.1. — In general.
12. — Judicial nature of proceedings in general.
13. — Proceedings not according to course of common law.
14. — Courts and other tribunals subject to review.
15. — Subject-matter.
16. — Finality of determination.
- 16.5. — Certiorari ineffectual or not beneficial.
17. — Particular proceedings in civil actions.
18. — Special proceedings.
19. — Summary proceedings.

**I. NATURE AND GROUNDS.**(Cont'd)

20. Acts and proceedings of public officers and boards and municipalities.
  - 20.1. — In general.
21. — Judicial nature of proceedings in general.
22. — Discretionary acts.
23. — Legislative acts and ordinances.
24. — Executive and ministerial acts in general.
25. — Appointment or removal of officers.
26. — Audit and payment of claims.
27. Grounds in general.
28. Want or excess of jurisdiction.
  - (1). In general.
  - (2). Decisions and proceedings of courts, judges and judicial officers.
  - (3). Acts and proceedings of public officers and boards.
29. Errors and irregularities.
31. Defenses and grounds of opposition.
32. Right of review.
  - 32.1. — In general.
33. — Persons entitled.
  - (1). In general.
  - (2). Decisions and proceedings of courts, judges and judicial officers.
  - (3). Acts and proceedings of public officers and boards and municipalities.
34. — Estoppel or waiver.

**II. PROCEEDINGS AND DETERMINATION.**

35. Jurisdiction.
36. Presentation of objections and exceptions in original proceeding.
37. Parties.
38. Time of taking proceedings.
39. — In general.
40. — Constitutional and statutory limitations.
 

*See also LIMITATION OF ACTIONS.*
41. — Laches.
42. Petition or other application.
  - (.5). In general.
    - (1). Formal requisites and necessity in general.
    - (2). Signature and verification.

**74. CHAMPERTY AND MAINTENANCE****II. PROCEEDINGS AND DETERMINATION.**(Cont'd)

- (3). Sufficiency of allegations in general.
- (4). Allegations of error.
- (5). Excusing failure to appeal.
- (6). Affidavit of merits and good faith.
- (7). Records or exhibits.
- (8). Defects and objections.
- (9). Amendment.
- 43. Bond or other security, and payment of costs and fees.
- 44. Allowance and issuance of writ.
- 45. Form and requisites of writ.
- 46. Service of writ or notice of proceeding.
- 47. Supersedeas or stay of proceedings.
- 48. Return and record.
- 49. — In general.
- 50. — Scope and contents of record or transcript.
- 51. — Statement of matters not of record.
- 52. — Bill of exceptions.
- 53. — Making, form, and requisites.
- 54. — Defects and objections.
- 55. — Amendment and further return.
- 56. — Conclusiveness and effect.
  - (1). In general.
  - (2). Contradicting return.
- 57. — Questions presented for review.
- 58. — Matters not apparent of record.
- 59. Assignment of errors.
- 60. Quashing or dismissal.
- 61. Notice of hearing.
- 62. Hearing and rehearing.
- 63. Review.
- 63.1. — In general.
- 64. — Scope and extent in general.
  - (1). In general.
  - (2). Jurisdictional questions.
- 65. — Mode of review and trial de novo.
- 66. — Presumptions.
- 67. — Matters of discretion.
- 68. — Questions of fact.
- 69. Determination and disposition of cause.
- 70. Appeal or other proceedings for review.
  - (.5). In general.
    - (1). Decisions reviewable, and jurisdiction.

**II. PROCEEDINGS AND DETERMINATION.**(Cont'd)

- (2). Failure to present question in certiorari proceeding.
- (3). Requisites of and proceedings for transfer of cause and supersedeas.
- (3.5). Parties.
- (4). Record and assignments of error.
- (5). Scope and extent of review in general.
- (6). Presumptions.
- (7). Matters of discretion.
- (8). Questions of fact.
- (9). Determination and disposition of cause.
- 71. Costs.
- 72. Liabilities on bonds.

**74. CHAMPERTY AND MAINTENANCE****SUBJECTS INCLUDED**

Officious intermeddling in a suit between others by assisting either party to carry it on, with or without an agreement to divide the subject of litigation in the event of success

Agreements for such division or for the purchase of property held adversely, conveyances of such property

Agreements for the purchase of pretended titles or rights of actions for the purpose of suing thereon

Criminal responsibility for unlawful maintenance of suits and barratry

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Attorneys, contracts for compensation by contingent fees, and professional ethics, see ATTORNEYS AND LEGAL SERVICES

- 1. Nature and elements in general.
- 2. What law governs.
- 3. Statutory provisions.
- 4. Champertous contracts in general.

**74. CHAMPERTY AND MAINTENANCE**

- (.5). In general.
- (1). Agreements to conduct litigation or pay costs and expenses of suit, or to advance money therefor, in consideration of portion of recovery.
- (2). Agreements in consideration of information given or services rendered.
- (3). Agreements to dismiss or abandon suit.
- (4). Mortgage or sale of chattels held or claimed adversely.
- (5). Who may raise objections.
- (6). Persons liable.
- (7). Operation and effect.
- (8). Pleading.
- 5. Contracts and transactions with attorneys.
  - (.5). In general.
  - (1). Validity of contract in general.
  - (2). In absence of attorney's agreement to pay costs.
  - (3). As affected by attorney's agreement to pay costs and expenses.
  - (4). Agreements with political bodies.
  - (5). Agreements with third persons to procure claims for collection.
  - (6). Agreements whereby attorney acquires interest in subject-matter.
  - (7). Who may raise objections.
  - (8). Operation and effect.
  - (9). Pleading and evidence.
  - (10). Questions for jury and instructions.
- 6. Transfers of claims for purpose of litigation.
  - (1). In general.
  - (2). What are litigious rights.
  - (3). Assignments pendente lite.
  - (4). Who may raise objections.
  - (5). Operation and effect.
- 7. Grants of lands held adversely.
  - (.5). In general.
  - (1). Validity of deed to land held adversely in general.
  - (2). What constitutes adverse possession.
  - (3). Alienations prohibited.
  - (4). Persons entitled to make objections.

- (5). Operation and effect; pleading and proceedings in general.
- (6). Instructions.
- (7). Questions for jury.
- 8. Criminal responsibility.
- 8.1. — In general.
- 9. — Offenses.
- 10. — Prosecution and punishment.
- 11. Actions for damages.

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**75. CHARITIES****SUBJECTS INCLUDED**

Gifts, devises, bequests and trusts for purposes regarded as charitable uses; their validity, operation and effect in general

Application to them of the doctrine of cy pres

Organization, franchises and powers of charitable societies

Rights, powers and liabilities of such societies, or of trustees of charities, or of the donors and of beneficiaries

Judicial control and protection of charitable societies and charities, and remedies relating thereto

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Particular charitable institutions and organizations, see **ASYLUMS AND ASSISTED LIVING FACILITIES, HEALTH, INFANTS, MENTAL HEALTH, RELIGIOUS SOCIETIES**

Particular instruments, validity and construction of, see **REAL PROPERTY CONVEYANCES, GIFTS, TRUSTS, WILLS**

Perpetuities and accumulations, restrictions on, see **PERPETUITIES**

Taxation of property of charitable societies or property held for charitable purposes, and exemptions, see **TAXATION**

Testamentary disposition, restrictions on, see **WILLS**

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I. CREATION, EXISTENCE AND VALIDITY, ¶¶1-30.

**75. CHARITIES****II. CONSTRUCTION, ADMINISTRATION, AND ENFORCEMENT,**  
⌚31-50.**I. CREATION, EXISTENCE AND VALIDITY.**

1. Nature of charities.
2. What law governs.
3. Constitutional and statutory provisions.
4. Validity of gifts and trusts in general.
5. Subject of gift.
6. Form of gift.
7. Character and capacity of beneficiaries.
8. Number of beneficiaries.
9. Purposes of gift.
10. — In general.
11. — Relief of poor or unfortunate.
12. — Education.
13. — Promotion of religion.
14. — Public institutions and improvements.
15. — Care or improvement of burial grounds or lots.
16. — Prayers or masses.
17. Certainty as to property.
18. Necessity of trustee.
19. Certainty as to trustees or donees.
20. Capacity of trustees or donees to take.
  - (1). In general.
  - (2). Corporations.
  - (3). Voluntary unincorporated associations.
  - (4). Associations or corporations to be created or incorporated.
  - (5). Municipal bodies or corporations.
21. Certainty as to beneficiaries.
  - (1). In general.
  - (2). Beneficiaries to be designated by trustees or donees.
  - (3). Gifts for relief of poor, unfortunate, or infirm.
  - (4). Gifts for promotion of education.
  - (5). Gifts for promotion of religion.
22. Certainty as to purpose of gift.
  - (1). In general.
  - (2). Purpose discretionary with trustee.
  - (3). Gifts for relief of poor or unfortunate.
  - (4). Gifts for promotion of education.
  - (5). Gifts for promotion of religion.
23. Certainty as to manner of executing trust.

**I. CREATION, EXISTENCE AND VALIDITY.(Cont'd)**

24. Acceptance by trustee or donee.
25. Partial invalidity.
26. Estoppel or waiver as to defects or objections.
27. Persons entitled to question validity of gift.
28. Modification or revocation.
29. Nonuser or misuser.
30. Duration and termination.

**II. CONSTRUCTION, ADMINISTRATION, AND ENFORCEMENT.**

31. General rules of construction.
32. Evidence to aid construction.
33. Trustees or donees.
34. Beneficiaries.
35. Property included and title or interest acquired.
36. Purposes of gift.
37. Application of doctrine of cy pres.
  - (.5). In general.
    - (1). Nature and requisites in general.
    - (2). Adoption or rejection of doctrine.
    - (3). Impossibility or impracticability of literal compliance with trust.
    - (4). Ineffective designation or nonexistence of donee, or renunciation of gift.
    - (5). Surplus or deficiency of funds.
    - (6). General charitable purposes.
    - (7). Provision by donor in event of failure of gift.
    - (8). Manner of application.
38. Conditions.
39. Incorporation and organization of charitable societies.
40. Franchises and powers of charitable societies.
41. Public aid.
- 41.5. Statutory regulations.
42. Supervision by public officers.
43. Judicial supervision or administration.
44. Visitation.
45. Rights, duties, and liabilities of charitable societies and trustees.
  - (1). In general.
  - (2). Liability for torts.
46. Officers and agents of charitable societies.



**75. CHARITIES****II. CONSTRUCTION, ADMINISTRATION,  
AND ENFORCEMENT.**(Cont'd)

- 47. Judicial appointment of trustees.
- 48. Administration and disposition of property or funds.
  - (1). In general.
  - (2). Sale or lease of property.
- 49. Persons entitled to enforce charitable trust.
- 50. Actions for administration or enforcement.

**76. CHATTEL MORTGAGES****SUBJECTS INCLUDED**

Transfers of personal property in general as security for payment of money or performance of contracts or other obligations, whether made by conveyance on condition or with defeasance, or by deed of trust, or trust receipt or by bill of sale or other conveyance absolute in form without delivery of the property

Nature, requisites, validity, incidents, operation and effect of such transfers

Evidence relating thereto

Instruments in writing by which such conveyances, defeasances, etc., are made, and delivery, acceptance, recording or registration and construction thereof

Liens of mortgages and priorities

Rights, duties and liabilities of the parties as between themselves and as to others

Effect of transfers of debts and obligations secured, or of mortgages, and of property mortgaged

Fraudulent sale or removal of mortgaged goods

Payment or other satisfaction or release

Enforcement and redemption

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Assignments as security of choses in action, see **ASSIGNMENTS**

Conditional sales, see **SALES**

Fixtures, rights of mortgagors and mortgagees, see **PROPERTY VI**

Fraud in mortgage as to creditors or subsequent purchasers, see **FRAUDULENT CONVEYANCES**

Particular classes of persons, mortgages by or to, see **INFANTS, MENTAL HEALTH** and other specific topics

— Associations and unincorporated companies, see **ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS XV**

— Corporations, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

— Fiduciary or representative capacity, persons in, see **EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, PRINCIPAL AND AGENT, TRUSTS** and other specific topics

— Partners, see **PARTNERSHIP**

Pledges and collateral securities, see **CORPORATIONS AND BUSINESS ORGANIZATIONS, PLEDGES**

Secured transactions under Uniform Commercial Code, see **SECURED TRANSACTIONS**

Vessels, cargos, freight, etc., mortgages of, see **SHIPPING**

**I. REQUISITES AND VALIDITY, ¶1-80.**

(A) **NATURE AND ESSENTIALS OF TRANSFERS OF CHATTELS AS SECURITY, ¶1-40.**

(B) **FORM AND CONTENTS OF INSTRUMENTS, ¶41-56.**

(C) **EXECUTION AND DELIVERY, ¶57-69.**

(D) **VALIDITY, ¶70-80.**

**II. FILING, RECORDING, AND REGISTRATION, ¶82-99.**

(A) **ORIGINAL, ¶82-94.**

(B) **RENEWAL, ¶95-99.**

**III. CONSTRUCTION AND OPERATION, ¶100-157.**

(A) **GENERAL RULES OF CONSTRUCTION, ¶100-107.**

(B) **PARTIES AND DEBTS OR LIABILITIES SECURED, ¶108-115.**

(C) **PROPERTY MORTGAGED, AND ESTATES AND INTERESTS OF PARTIES THEREIN, ¶116-132.**

(D) **LIEN AND PRIORITY, ¶133-157.**

**76. CHATTEL MORTGAGES**

- IV. RIGHTS AND LIABILITIES OF PARTIES, ⚖️158–178.
- V. RIGHTS AND REMEDIES OF CREDITORS, ⚖️179–202.
- VI. ASSIGNMENT OF MORTGAGE OR DEBT, ⚖️203–215.5.
- VII. REMOVAL OR TRANSFER OF PROPERTY BY MORTGAGOR, ⚖️216–234.
  - (A) RIGHTS AND LIABILITIES OF PARTIES, ⚖️216–229.
  - (B) CRIMINAL RESPONSIBILITY, ⚖️230–234.
- VIII. PAYMENT OR PERFORMANCE OF CONDITION, RELEASE, AND SATISFACTION, ⚖️235–248.
- IX. FORECLOSURE, ⚖️249–292.
- X. REDEMPTION, ⚖️293–300.

**I. REQUISITES AND VALIDITY.****(A) NATURE AND ESSENTIALS OF TRANSFERS OF CHATTELS AS SECURITY.**

- 1. Nature of mortgage in general.
- 2. What law governs.
- 3. Statutory provisions.
- 4. Mortgage distinguished from other transactions.
- 5. — In general.
- 6. — Sale.
- 7. — Lease.
- 8. — Pledge.
- 9. — Trust or power.
- 10. Property which may be subject of mortgage.
- 11. — In general.
- 12. — Crops.
- 13. — Animals and increase.
- 14. — Household goods.
- 15. — Stock in trade.
- 16. — Fixtures.
- 17. — Title or interest of mortgagor.
- 18. — After-acquired property.
- 19. Mortgage of both real and personal property.
- 20. Debts or liabilities which may be secured.
- 21. — In general.
- 22. — Future advances.
- 23. — Performance of contract or other obligation.
- 24. — Indemnity mortgages.
- 25. — Fees and costs.
- 26. Conditions which may be imposed.

**I. REQUISITES AND VALIDITY.(Cont'd)**

- 27. Parties.
- 28. — In general.
- 29. — Persons who may make mortgage.
- 30. — Persons who must join in mortgage.
- 31. — Persons to whom mortgage may be made.
- 32. Consideration.
- 33. Equitable mortgage.
- 34. Absolute bill of sale as mortgage.
- 35. Evidence as to character of transaction or instrument.
- 35.1. — In general.
- 36. — Presumptions and burden of proof.
- 37. — Admissibility in general.
- 38. — Parol evidence.
- 39. — Weight and sufficiency.
- 40. Questions for jury.

**(B) FORM AND CONTENTS OF INSTRUMENTS.**

- 41. Necessity and sufficiency of writing in general.
- 42. Form of instrument.
- 43. — In general.
- 44. — Trust deeds.
- 45. Designation of parties.
- 46. Description of property.
- 46.1. — In general.
- 47. — Certainty in general.
- 48. — Crops.
- 49. — Animals.
  - (1). In general.
  - (2). Marks and brands.
- 50. — Stock in trade.
- 51. — False description.
- 52. Description of debts or liabilities secured.
- 53. Promise to pay debt.
- 54. Statement as to mortgage in obligation secured.
- 55. Statement of consideration.
- 56. Statement of condition.

**(C) EXECUTION AND DELIVERY.**

- 57. Execution in general.
- 58. Signature.
- 59. Seal.
- 60. Attestation.
- 61. Acknowledgment.
- 62. Affixing revenue stamps.

**76. CHATTEL MORTGAGES****I. REQUISITES AND VALIDITY.(Cont'd)**

- 63. Affidavit accompanying instrument.
- 64. Delivery of copy of instrument to mortgagor.
- 65. Confirmation or ratification of defective instrument.
- 66. Delivery.
- 67. Acceptance.
- 68. Evidence.
- 69. Questions for jury.

**(D) VALIDITY.**

- 70. Capacity and assent of parties in general.
- 71. Mistake.
- 72. Fraud, duress, or undue influence.
- 73. Illegality.
- 74. Partial invalidity.
- 75. Estoppel or waiver as to defects or objections.
- 76. Ratification of voidable mortgage.
- 77. Right to contest validity.
- 79. Evidence.
- 80. Questions for jury.

**II. FILING, RECORDING, AND REGISTRATION.****(A) ORIGINAL.**

- 82. What law governs.
- 83. Statutory provisions.
- 84. Necessity as between parties to instrument.
- 85. Instruments to be recorded.
- 86. Time.
- 87. Place.
- 88. Effect of removal of mortgagor.
- 89. Effect of removal of goods.
- 90. Sufficiency.
- 91. Effect of filing or record as between parties to instrument.
- 92. Effect of failure to file or record as between parties to instrument.
- 93. Evidence.
- 94. Questions for jury.

**(B) RENEWAL.**

- 95. Statutory provisions.
- 96. Necessity.
- 97. Time.

**II. FILING, RECORDING, AND REGISTRATION.(Cont'd)**

- 98. Affidavit for renewal or continuance.
- 99. Filing or recording anew.

**III. CONSTRUCTION AND OPERATION.****(A) GENERAL RULES OF CONSTRUCTION.**

- 100. Application to chattel mortgages in general.
- 101. What law governs.
- 102. Language of instrument in general.
- 103. Recitals.
- 104. Construing instruments together.
- 105. Time of taking effect.
- 106. Evidence to aid construction in general.
- 107. Questions for jury.

**(B) PARTIES AND DEBTS OR LIABILITIES SECURED.**

- 108. Parties secured.
- 109. Debts secured in general.
- 110. Future advances.
- 111. Payment of debt.
- 112. Performance of contract or other obligation.
- 113. Indemnity.
- 114. Extension to other debts or liabilities.
- 115. Fees and costs.

**(C) PROPERTY MORTGAGED, AND ESTATES AND INTERESTS OF PARTIES THEREIN.**

- 116. Property included in description in general.
- 117. Crops.
- 118. Animals and increase.
- 119. Household goods.
- 120. Stock in trade.
- 121. Fixtures.
- 122. Particular description.
- 123. Erroneous description.
- 124. After-acquired property or interest.
- 125. Change in character or identity of property.
- 126. Extension to or substitution of other property.
- 127. Title of mortgagor.
- 128. Estates and interests of parties.
- 128.1. — In general.
- 129. — Under mortgages in general.
- 130. — Under trust deeds.

**76. CHATTEL MORTGAGES****III. CONSTRUCTION AND  
OPERATION.(Cont'd)**

- 131. — Under absolute bill of sale as mortgage.
- 132. Exceptions and reservations.

**(D) LIEN AND PRIORITY.**

- 133. Nature and existence of lien in general, and statutory provisions.
- 134. Scope and extent of lien.
- 135. Duration of lien.
- 136. Waiver or loss of lien.
- 137. Priorities of debts or obligations secured by same mortgage.
- 138. Priorities of mortgages in general.
  - (1). In general.
  - (2). Priorities between mortgages.
  - (3). Priority between mortgage and landlord's lien.
- 139. Mortgagee as bona fide purchaser.
- 140. Priority of mortgage or lien for price of property mortgaged.
- 141. Priority as affected by provisions of mortgage or by agreement.
- 142. Priority of execution or delivery.
- 143. Priority as affected by possession.
- 144. Priority of record.
- 145. Notice of mortgage affecting priority.
- 146. — In general.
- 147. — Actual notice.
- 148. — Constructive notice in general.
- 149. — Possession as notice.
- 150. — Record of mortgage as notice.
  - (1). In general.
  - (2). Delay in recording, and recording in wrong place.
  - (3). Mortgage on crops.
- 151. Failure to file or record mortgage.
  - 151.1. — In general.
- 152. — Effect in general.
- 153. — Subsequent bona fide purchasers or mortgagees.
- 154. — Purchase or mortgage as affected by failure to renew or refile.
- 155. — Effect of actual notice.
- 156. — Effect of change of possession.
- 157. Actions to determine and establish rights.
  - (1). In general.

**III. CONSTRUCTION AND  
OPERATION.(Cont'd)**

- (2). Evidence.
- (3). Questions for jury.

**IV. RIGHTS AND LIABILITIES OF PARTIES.**

- 158. Possession or control of property.
  - 158.1. — In general.
- 159. — Before default in general.
- 160. — Statutory provisions.
- 161. — Provisions of mortgage.
- 162. — After default.
- 163. Use and disposition of property or proceeds.
  - 163.1. — In general.
- 164. — By mortgagor.
- 165. — By mortgagee in possession.
- 166. — By mortgagee or trustee after default.
- 167. Conversion of or injury to property.
  - 167.1. — In general.
- 168. — By mortgagor.
- 169. — By mortgagee or trustee.
- 170. — By third persons.
  - (1). In general.
  - (2). Attachment or execution creditors.
- 171. Actions for possession of property.
  - 171.1. — In general.
- 172. — Between parties to mortgage.
  - (1). In general.
  - (2). Defense.
  - (3). Conditions precedent.
  - (4). Pleading and parties.
  - (5). Evidence.
  - (6). Damages.
  - (7). Questions for jury.
  - (8). Instructions.
  - (9). Verdict and judgment.
- 173. — Against third persons.
  - (1). In general.
  - (2). Conditions precedent.
  - (3). Parties and pleading.
  - (4). Evidence.
  - (5). Damages.
  - (6). Questions for jury.
- 174. — Between mortgagees.
  - (1). In general.
  - (2). Pleading and evidence.

**76. CHATTEL MORTGAGES****IV. RIGHTS AND LIABILITIES  
OF PARTIES.(Cont'd)**

- 175. Actions for damages.
- 175.1. — In general.
- 176. — Between parties to mortgage.
  - (1). In general.
  - (2). Conditions precedent.
  - (3). Pleading.
  - (4). Evidence.
  - (5). Damages.
  - (6). Trial.
- 177. — Against third persons.
  - (1). In general.
  - (2). Pleading.
  - (3). Evidence.
  - (4). Damages.
  - (5). Trial.
- 178. — Between mortgagees.
  - (1). In general.
  - (2). Pleading.
  - (3). Evidence.

**V. RIGHTS AND REMEDIES OF CREDITORS.**

- 179. Rights in derogation of mortgage in general.
- 180. Creditors entitled to attack mortgage.
- 180.1. — In general.
- 181. — Nature and grounds of claims in general.
- 182. — Necessity of lien.
- 183. — Sufficiency of lien.
- 184. Retention of possession by mortgagor.
- 184.1. — In general.
- 185. — Necessity of change of possession as against creditors.
- 186. — Statutory provisions.
- 187. — Effect of possession or control by mortgagor in general.
- 188. — Reservation of possession, power of sale, or use.
  - (1). In general.
  - (2). Sale in usual course of trade.
- 189. — Agency of mortgagor for mortgagee.
- 190. — Disposition of proceeds of property.
  - (1). In general.
  - (2). Discharge of mortgage debt.

**V. RIGHTS AND REMEDIES OF  
CREDITORS.(Cont'd)**

- 191. — Sufficiency of transfer of possession.
- 192. Delay in filing or recording or renewal or refileing.
- 193. Failure to file or record mortgage.
- 193.1. — In general.
- 194. — Necessity of filing or recording as against creditors.
- 195. — Statutory provisions.
- 196. — Effect of failure to file or record or to renew filing or record.
- 197. — Creditors entitled to protection.
  - (1). In general.
  - (2). Creditors with notice.
- 198. Defects cured by taking possession.
- 199. Waiver or estoppel.
- 200. Remedies on ground of nullity of mortgage.
- 201. Actions to determine and establish rights.
  - (1). In general.
  - (2). Evidence.
- 202. Actions to set aside mortgages.

**VI. ASSIGNMENT OF MORTGAGE OR DEBT.**

- 203. Requisites and validity in general.
- 204. Filing or recording assignment.
- 205. Transfer of debt or obligation secured.
- 206. Operation and effect.
- 207. Rights and liabilities of parties.
- 208. — In general.
- 209. — Property mortgaged.
- 210. — Payment or release of debt.
- 211. — Equities and defenses between original parties.
- 212. — Equities in favor of third persons.
- 213. Actions by or against assignees.
- 214. Assignment to mortgagor or owner of property.
- 215. — In general.
- 215.5. Evidence.

**VII. REMOVAL OR TRANSFER OF PROPERTY  
BY MORTGAGOR.****(A) RIGHTS AND LIABILITIES OF PARTIES.**

- 216. Right of mortgagor to remove.
- 217. Effect of removal.

**76. CHATTEL MORTGAGES****VII. REMOVAL OR TRANSFER OF PROPERTY  
BY MORTGAGOR.(Cont'd)**

- 218. Right of mortgagor to sell and convey.
- 219. Consent of mortgagee to sale.
- 220. Liabilities of mortgagor on transfer of property.
- 223. Rights and liabilities of purchaser or transferee.
- 223.1. — In general.
- 224. — As to mortgagor.
- 225. — As to mortgagee in general.
  - (1). In general.
  - (2). Conversion.
- 226. — Assumption of debt.
- 227. Right to proceeds of property.
- 228. Actions by mortgagee against mortgagor.
- 229. Actions by mortgagee against purchaser or transferee.
  - (1). In general.
  - (2). Pleading.
  - (3). Evidence.

**(B) CRIMINAL RESPONSIBILITY.**

- 230. Offenses.
- 231. Preliminary proceedings in prosecution.
- 232. Indictment or information.
- 233. Evidence.
- 234. Trial and review.

**VIII. PAYMENT OR PERFORMANCE  
OF CONDITION, RELEASE,  
AND SATISFACTION.**

- 235. Payment of debt.
- 235.5. Taking new notes.
- 236. Performance of particular conditions.
- 237. Tender.
- 237.1. — In general.
- 238. — Before default.
- 239. — After default.
- 240. Conveyance or disposition of property mortgaged.
- 241. Giving new security.
- 242. Resort to or release of other security or remedy.
- 243. Release in general.
- 244. Partial release.
- 245. Penalties for failure to release or enter satisfaction.
- 246. Entry of satisfaction of record.
- 247. Effect of release or satisfaction.

**VIII. PAYMENT OR PERFORMANCE OF  
CONDITION, RELEASE, AND  
SATISFACTION.(Cont'd)**

- 248. Rights of third persons making payment or satisfaction.

**IX. FORECLOSURE.**

- 249. Right to foreclose in general.
- 250. Maturity of debt.
- 251. Option and election to foreclose.
- 252. Default in payment or performance of condition.
- 253. Waiver of default or of right to foreclose.
- 254. Delay or failure to foreclose.
- 255. Existence of or resort to other remedy; election of remedy.
- 256. Restraining foreclosure.
- 257. Exercise of power of sale.
- 257.1. — In general.
- 258. — Nature and grounds of remedy.
- 259. — Statutory provisions.
- 260. — Preliminary proceedings and transfer of proceedings to court.
- 261. — Taking possession, custody, and protection of property.
- 262. — Manner and conduct of sale.
  - (1). In general.
  - (2). Sale in bulk or parcels.
  - (3). Persons who may purchase.
  - (4). Amount sold.
- 263. — Title and rights of purchaser.
- 264. — Deficiency and personal liability.
- 265. — Proceeds and surplus.
- 266. — Fees and costs.
- 267. — Operation and effect.
- 268. Actions to foreclose.
- 268.1. — In general.
- 269. — Nature and form.
- 270. — Statutory provisions.
- 271. — Grounds and conditions precedent.
- 272. — Defenses.
- 273. — Jurisdiction and venue.
- 274. — Limitations and laches.  
*See also LIMITATION OF ACTIONS.*
- 275. — Parties.
- 276. — Process and appearance.
- 277. — Pleading.
- 278. — Evidence.
- 279. — Attachment or sequestration.

**76. CHATTEL MORTGAGES****IX. FORECLOSURE.**(Cont'd)

- 280. — Redelivery of property to mortgagor on security.
- 281. — Injunction and receiver.
- 282. — Trial or hearing.
- 283. — Judgment or decree and execution.
- 284. — Claims to property by third persons.
- 285. — Manner and conduct of sale.
- 286. — Title and rights of purchaser.
- 287. — Deficiency and personal liability.
- 288. — Proceeds and surplus.
- 289. — Review.
- 290. — Fees and costs.
- 291. — Operation and effect.
- 292. Wrongful foreclosure.
  - (1). In general.
  - (2). Damages.

**X. REDEMPTION.**

- 293. Right to redeem in general.
- 294. Persons entitled to redeem.
- 295. Waiver, estoppel, and laches.
- 296. Time of redemption.
- 297. Amount required to redeem.
- 298. Tender and payment into court.
- 299. Proceedings on redemption.
- 300. Actions to redeem and for accounting.

**76A. CHEMICAL DEPENDENTS****SUBJECTS INCLUDED**

- Persons dependent upon or addicted to alcohol or narcotic or other dangerous drugs
- Their rights and disabilities in general
- Custody and protection of their persons and property and legal proceedings affecting them
- Commitment or treatment of such persons, through official or judicial action

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Asylums and other residential facilities not providing treatment, see **ASYLUMS AND ASSISTED LIVING FACILITIES**

Automobiles, driving while intoxicated, see **AUTOMOBILES**

Capacity to stand trial, and determination thereof, see **CRIMINAL LAW, MENTAL HEALTH**

Civil liabilities arising out of patient care, failure to protect patient from injury, and failure to protect third party from acts of patient, see **HEALTH**

Crimes by chemical dependents and intoxication as defense, see **CRIMINAL LAW, HOMICIDE** and other specific topics

Divorce for drunkenness or chemical dependency, see **DIVORCE**

Drug use or addiction as an offense, see **CONTROLLED SUBSTANCES**

Mental health generally, see **MENTAL HEALTH**

Sale, consumption, and use of alcohol, see **ALCOHOLIC BEVERAGES**

Temporary intoxication, disability from, see **CONTRACTS, REAL PROPERTY CONVEYANCES**, and other specific topics

Testamentary capacity, see **WILLS**

**I. IN GENERAL,** ¶1–9.**II. COMMITMENT OR TREATMENT,** ¶10–25.**I. IN GENERAL.**

- 1. Chemical dependency and its effect in general.
- 2. Constitutional and statutory provisions.
- 3. Guardianship.
- 4. Criminal liability.
  - Intoxication as offense, see ALCOHOLIC BEVERAGES II(E)11, CONTROLLED SUBSTANCES ¶38.*
- 4.1. — In general.
- 5. — Prosecution and punishment.

**II. COMMITMENT OR TREATMENT.**

- 10. In general.
- 11. Eligibility for, and persons subject to, commitment or treatment.
  - 11.1. — In general.
- 12. — Convicts and defendants in criminal prosecutions.
- 13. Proceedings.
  - 13.1. — In general.
- 14. — Criminal cases, proceedings in, in general.

**76D. CHILD CUSTODY**

**II. COMMITMENT OR TREATMENT.**(Cont'd)

- 15. — Consent of or acceptance by public officers.
- 16. — Petition or application; duty to inquire or institute proceedings.
- 17. — Affidavits or evidence.
- 18. — Notice, hearing, and determination.
- 19. — Examination.
- 20. — Counsel.
- 21. — Order or judgment, and record.
- 22. Treatment facilities and status of person committed.
- 23. Duration and termination of detention or treatment; further disposition of dependent.
- 23.1. — In general.
- 24. — Termination before cure or rehabilitation.
- 25. Review of proceedings.

**76D. CHILD CUSTODY**

**SUBJECTS INCLUDED**

- Child custody rights pending or following divorce or dissolution of marriage
- Visitation rights of parents, grandparents, and others
- Extent of custody rights
- Geographical limitations imposed on custodians
- Enforcement of custody rights
- Interstate and international custody disputes

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Custody and access to dependent, neglected, abandoned, or delinquent children, see INFANTS
- Issues peculiar to custody of Native American children, see INDIANS
- Parent and child relationship generally, rights of parents to control their children, and duty of parents to protect and supervise their children, see PARENT AND CHILD

- I. IN GENERAL, ¶1-9.
- II. GROUNDS AND FACTORS IN GENERAL, ¶20-89.
  - (A) IN GENERAL, ¶20-37.
  - (B) FACTORS RELATING TO PARTIES SEEKING CUSTODY, ¶41-68.
  - (C) FACTORS RELATING TO CHILD, ¶75-89.
- III. INCIDENTS AND EXTENT OF CUSTODY AWARD, ¶100-107.
- IV. JOINT CUSTODY, ¶120-155.
- V. VISITATION, ¶175-231.
- VI. GEOGRAPHICAL CONSIDERATIONS, ¶260-263.
- VII. PARTICULAR STATUS OR RELATIONSHIP, ¶270-329.
  - (A) IN GENERAL, ¶270-274.5.
  - (B) GRANDPARENTS, ¶275-289.
  - (C) ADOPTION, ¶310-313.
  - (D) TERMINATION OF PARENTS' MARRIAGE, ¶320-329.
- VIII. PROCEEDINGS, ¶400-534.
  - (A) IN GENERAL, ¶400-427.
  - (B) EVIDENCE, ¶450-475.
  - (C) HEARING, ¶500-512.
  - (D) JUDGMENT, ¶521-534.
- IX. MODIFICATION, ¶550-662.
  - (A) IN GENERAL, ¶550-551.
  - (B) GROUNDS AND FACTORS, ¶552-579.
  - (C) PROCEEDINGS, ¶600-662.
    - 1. IN GENERAL, ¶600-618.
    - 2. EVIDENCE, ¶631-642.
    - 3. HEARING AND DETERMINATION, ¶650-662.
- X. INTERSTATE ISSUES, ¶700-789.
  - (A) IN GENERAL, ¶700-708.
  - (B) FOREIGN DECREES AND ORDERS, ¶715-726.
  - (C) JURISDICTION OF FORUM COURT, ¶730-753.
  - (D) PROCEEDINGS AND RELIEF, ¶762-789.
- XI. INTERNATIONAL ISSUES, ¶800-830.
- XII. ENFORCEMENT, ¶850-874.
- XIII. APPEAL OR JUDICIAL REVIEW, ¶900-924.
- XIV. COSTS, ¶940-959.
- XV. CUSTODIAL INTERFERENCE, ¶965-992.
  - (A) IN GENERAL, ¶965-979.
  - (B) PROCEEDINGS, ¶980-985.
  - (C) JUDGMENT AND RELIEF, ¶986-992.



**76D. CHILD CUSTODY****I. IN GENERAL.**

1. In general.
2. Constitutional and statutory provisions.
3. — In general.
4. — Validity.
5. — Purpose.
6. — Retroactive operation.
7. Discretion.
8. Interest or role of government.
9. Authority of courts and judges.

**II. GROUNDS AND FACTORS IN GENERAL.****(A) IN GENERAL.**

20. In general.
21. Dependency on particular facts.
22. Persons entitled in general.
23. Death of parent.  
*See also, VII(B).*
24. Preference for mother or father.
25. Present or previous custody.
26. “Tender years” rule.
27. Custody of siblings; split custody.
28. Managing conservatorship.
29. Material benefit to child.
30. Religion.
31. Social factors.
32. Moral factors.
33. Multiple factors.
34. Agreements, contracts, or stipulations.
35. — In general.
36. — Divorce or dissolution settlements.
37. — Agreements to which child is a party.

**(B) FACTORS RELATING TO PARTIES SEEKING CUSTODY.**

41. In general.
42. Right of biological parent as to third persons in general.
43. Legal custody.
44. Primary caregiver.
45. Psychological parent.
46. Religion and spiritual matters.
47. Rewarding or punishing custodian.
48. Behavior of parties in general.
49. Motives.
50. Litigation conduct.
51. Relative fitness.

**II. GROUNDS AND FACTORS IN GENERAL.(Cont'd)**

52. Sexual behavior, orientation, or preference of parent.
53. — In general.
54. — Homosexuality.
55. — Effect on child.
56. Cohabitation with third party.
57. Previous interference with lawful custody or visitation.
58. Abuse or neglect of child.
59. Physical condition.
60. Use of drugs or alcohol.
61. Commission of crime.
62. Mental condition.
63. Financial resources.
64. Employment.
65. — In general.
66. — As demonstrating financial ability to support.
67. — As demonstrating inability to devote time to child-rearing.
68. Previous abandonment or relinquishment by custodian.

**(C) FACTORS RELATING TO CHILD.**

75. In general.
76. Welfare and best interest of child.
77. Existence of factors other than best interest of child.
78. Child’s preference of custodian.
79. Age of child.
80. Sex of child.
81. Health and physical condition of child.
82. Mental or emotional condition of child.
83. Connection of child to community.
84. Continuity of custody; stability.
85. Present relationship.
86. Existing custody of non-parent.
87. Geographical considerations.
88. Education.
89. Nonmarital circumstances of birth or conception.

**III. INCIDENTS AND EXTENT OF CUSTODY AWARD.**

100. In general.
101. Right to control child in general.
102. Duty to control child.
103. Duty to protect child.

**76D. CHILD CUSTODY****III. INCIDENTS AND EXTENT OF  
CUSTODY AWARD.(Cont'd)**

- 104. Religion.
- 105. Education.
- 106. Health care choices.
- 107. Discipline or punishment.

**IV. JOINT CUSTODY.**

- 120. In general.
- 121. Discretion.
- 122. Grounds in general.
- 123. Welfare and best interest of child.
- 124. Existence of factors other than best interest of child.
- 125. Persons entitled in general.
- 126. Right of biological parent as to third persons in general.
- 127. Ability of parents to cooperate.
- 128. Preference of courts for mother or father.
- 129. Custody of siblings.
- 130. Geographical considerations.
- 131. Education.
- 132. Material benefit to child.
- 133. Primary caregiver.
- 134. Behavior of parties in general.
- 135. Sexual behavior, orientation, or preference of party.
- 136. Cohabitation with third party.
- 137. Abuse or neglect of child.
- 138. Physical condition of custodian.
- 139. Use of drugs or alcohol by custodian.
- 140. Agreements, contracts, or stipulations.
- 141. — In general.
- 142. — As prerequisite to grant of joint custody.
- 143. Child's preference of custodian.
- 144. Age of child.
- 145. Health of child.
- 146. Performance of child in school.
- 146.5. Nonmarital circumstances of birth or conception.
- 147. Physical custody arrangements.
- 148. Transporting and transferring child.
- 149. Placement of child with third parties.
- 150. Conditions.
- 151. Control by and authority of parties.
- 152. — In general.
- 153. — Education.

**IV. JOINT CUSTODY.(Cont'd)**

- 154. — Extracurricular choices.
- 155. Employment status.

**V. VISITATION.**

- 175. In general.
- 176. Discretion.
- 177. Grounds in general.
- 178. Welfare and best interest of child.
- 179. Existence of factors other than best interest of child.
- 180. Right of biological parent as to third persons in general.
- 181. Ability of parties to cooperate.
- 182. Persons entitled in general.
- 183. Custody of siblings.
- 184. Geographical considerations.
- 185. Religion.
- 186. Primary caregiver.
- 187. Rewarding or punishing party.
- 188. Behavior of parties in general.
- 189. Motives.
- 190. Litigation conduct.
- 191. Sexual behavior or preference of party.
- 192. — In general.
- 193. — Homosexuals.
- 194. — Effect on child.
- 195. Cohabitation with third party.
- 196. Previous interference with lawful custody or visitation.
- 197. Abuse or neglect of child.
- 198. Physical condition of custodian.
- 199. Use of drugs or alcohol.
- 200. Commission of crime.
- 201. Mental condition.
- 202. Previous abandonment or relinquishment by custodian.
- 203. Agreements, contracts, or stipulations.
- 204. Child's preference.
- 205. Age of child.
- 206. Health and physical condition of child.
- 207. Mental health or condition of child.
- 208. Performance of child in school.
- 208.5. Nonmarital circumstances of birth or conception.
- 209. Physical custody arrangements.
- 210. — In general.
- 211. — Hours.
- 212. — Holidays.

**76D. CHILD CUSTODY****V. VISITATION.(Cont'd)**

- 213. Transporting and transferring child.
- 214. Placement of child with third parties.
- 215. Visitation conditions.
- 216. — In general.
- 217. — Supervised visitation.
- 218. — Payment of child support, attorney fees, alimony.
- 219. — Excluding other persons from being present during visitation.
- 220. — Place for visitation.
- 221. — Notice to custodial parent.
- 222. — Counseling.
- 223. — Restrictions on conduct.
- 224. — Bond.
- 225. Control by and authority of parties.
- 226. — In general.
- 227. — Religion.
- 228. — Education.
- 229. — Extracurricular choices.
- 230. — Discipline or punishment.
- 231. Employment status.

**VI. GEOGRAPHICAL CONSIDERATIONS.**

- 260. In general.
- 261. Removal from jurisdiction.
- 262. Construction and operation of court order.
- 263. Agreements.

**VII. PARTICULAR STATUS OR RELATIONSHIP.**

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**(A) IN GENERAL.**

- 270. In general.
- 271. Relatives in general.
- 272. Stepparents.
- 273. Adult siblings.
- 274. In loco parentis; de facto parents.
- 274.5. Assisted reproduction; surrogate parenting.

**(B) GRANDPARENTS.**

- 275. In general.
- 276. Grounds and factors in general.
- 277. Preference for maternal or paternal grandparents.
- 278. Conduct or status of child's parent or custodian.

**VII. PARTICULAR STATUS OR RELATIONSHIP.(Cont'd)**

- 279. — In general.
- 280. — Abandonment by parent or custodian.
- 281. — Failure to support or provide for child.
- 282. Grandparent visitation and access to child.  
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- 283. — In general.
- 284. — Grandparent rights as derivative.
- 285. — Conduct or status of child's parent or custodian.
- 286. — Objections of parent.
- 287. — Interference with parental rights.
- 288. — Parent unavailable.
- 289. — Death of parent.

**(C) ADOPTION.**

- 310. In general.
- 311. Visitation.
- 312. — In general.
- 313. — Grandparents.

**(D) TERMINATION OF PARENTS' MARRIAGE.**

- 320. In general.
- 321. Pending proceedings.
- 322. — In general.
- 323. — Power and authority of court.
- 324. — Grounds and factors.
- 325. — Visitation.
- 326. Proceedings for separate maintenance.
- 327. Annulment of marriage.
- 328. Dismissal of divorce or dissolution proceedings or failure to terminate marriage.
- 329. Decree of divorce or dissolution of marriage.

**VIII. PROCEEDINGS.****(A) IN GENERAL.**

- 400. In general.
- 401. Nature of child custody proceedings.
- 402. Purpose of proceedings.
- 403. Jurisdiction.
- 404. — In general.
- 405. — Constitutional and statutory provisions.

**76D. CHILD CUSTODY****VIII. PROCEEDINGS.(Cont'd)**

- 406. — Domicile of proposed custodians.
- 407. Venue.
- 408. Time for proceedings.
- 409. Parties; intervention.
- 410. Process.
- 411. Appearance.
- 412. Pleading.
- 413. — In general.
- 414. — Issues, proof and variance.
- 415. Appointment of professionals.  
*Appointment of counsel or guardian ad litem for child,*  
*see INFANTS.*
- 416. — In general.
- 417. — Investigators.
- 418. — Mental health professionals.
- 419. Mediation, alternative dispute resolution, arbitration.
- 420. Examination of home.
- 421. Reports and recommendations.
- 422. Discovery.
- 423. — In general.
- 424. — Physical examination of persons.
- 425. — Mental examinations.
- 426. Orders of protection pending proceedings.
- 427. In camera examination of child.

**(B) EVIDENCE.**

- 450. In general.
- 451. Admissibility.
- 452. Burden of proof.
- 453. Presumptions.
- 454. — In general.
- 455. — Fitness.
- 456. — Misconduct or status affecting presumption.
- 457. — “Tender years” presumption.
- 458. — Presumption for mother or father.
- 459. — “Primary parent”.
- 460. — Presumption in favor of parent.
- 461. — Visitation.
- 462. — Joint custody.
- 463. — Grandparents.
- 463.5. — Nonmarital circumstances of birth or conception.
- 464. — Geographical limitations.
- 465. Degree of proof.
- 466. Weight and sufficiency.
- 467. — In general.

**VIII. PROCEEDINGS.(Cont'd)**

- 468. — Disputes between parent and non-parent, in general.
- 469. — Fitness or conduct of parent.
- 470. — “Primary parent”.
- 471. — Visitation.
- 472. — Joint custody.
- 473. — Grandparents.
- 474. — Geographical limitations.
- 475. — Necessity of expert testimony.

**(C) HEARING.**

- 500. In general.
- 501. Joinder and consolidation.
- 502. Time for hearing.
- 503. Confidentiality of proceedings.
- 504. Reference.
- 505. Scope of inquiry.
- 506. Presence or interview of child.
- 507. Presence of parent or custodian.
- 508. Special verdict or issue submitted to jury.
- 509. Questions of law or fact.
- 510. Findings and verdict by jury.
- 511. Decision and findings by court.
- 512. New trial or rehearing.

**(D) JUDGMENT.**

- 521. In general.
- 522. Clarity and specificity.
- 523. Finality.
- 524. Conformity to pleadings, evidence, and verdict.
- 525. Visitation.
- 526. Amendment, clarification, opening, or vacating.
- 527. Conditions.
- 528. — In general.
- 529. — Bonds.
- 530. Relief granted.
- 531. Operation and effect.
  - (1). In general.
  - (2). Termination.
- 532. Res judicata.
- 533. Collateral estoppel and issue preclusion.
- 534. Default.

**76D. CHILD CUSTODY****IX. MODIFICATION.****(A) IN GENERAL.**

- 550. In general.
- 551. Discretion.

**(B) GROUNDS AND FACTORS.**

- 552. In general.
- 553. Welfare of child and material change in circumstances.
- 554. Welfare and best interest of child.
- 555. Change in circumstances or conditions.
- 556. Materiality of change.
- 557. Factors existing at time of prior adjudication.
  - (1). In general.
  - (2). Factors considered in prior adjudication.
  - (3). Factors not considered in prior adjudication.
- 558. Abuse, neglect, or abandonment of child.
- 559. Change in fitness or status of custodian in general.
- 560. Change in fitness or status of party seeking modification.
- 561. Religion.
- 562. Sexual behavior, orientation, or preference of parties.
- 562.5. Nonmarital circumstances of birth or conception.
- 563. Physical condition of parties.
- 564. Mental condition of parties.
- 565. Financial resources of parties.
- 566. Child's preference.
- 567. New partner for party.
- 568. Parent or custodian's relocation of home.
- 569. Interference with custody rights.
- 570. Agreements.
- 571. — In general.
- 572. — Validity in general.
- 573. — Validity of provisions barring modification.
- 574. — Operation and effect.
- 575. Incidents of custody in general.
- 576. Joint custody.
- 577. Visitation.
- 578. Particular status or relationship.
- 579. Grandparents.

**(C) PROCEEDINGS.****1. IN GENERAL.**

- 600. In general.
- 601. Jurisdiction.
- 602. Venue.
- 603. Change of venue.
- 604. Time for proceedings.
- 605. Parties.
- 606. Process.
- 607. Appearance.
- 608. Pleading.
- 609. — In general.
- 610. — Issues, proof and variance.
- 611. Appointment of professionals.
- 612. — In general.
- 613. — Investigators.
- 614. — Mental health professionals.
- 615. Examination of home.
- 616. Reports and recommendations.
- 617. Discovery.
- 618. Orders of protection pending proceedings.

**2. EVIDENCE.**

- 631. In general.
- 632. Admissibility.
- 633. Burden of proof.
- 634. Presumptions.
- 635. Degree of proof.
- 636. Weight and sufficiency.
- 637. — In general.
- 638. — Visitation.
- 639. — "Psychological" or de facto parents.
- 640. — Stepparents.
- 641. — Grandparents.
- 642. — Geographical matters.

**3. HEARING AND DETERMINATION.**

- 650. In general.
- 651. Time for hearing.
- 652. Reference.
- 653. Scope of inquiry.
- 654. Presence of child; in camera examination or interview.
- 655. Presence of parent or custodian.
- 656. Special verdict or issue submitted to jury.
- 657. Questions of law or fact.

**76D. CHILD CUSTODY****IX. MODIFICATION.(Cont'd)**

- 658. Findings and verdict by jury.
- 659. Decision and findings by court.
- 660. New trial or rehearing.
- 661. Judgment.
- 662. Operation and effect.

**X. INTERSTATE ISSUES.****(A) IN GENERAL.**

- 700. In general.
- 701. Constitutional, statutory, and regulatory provisions.
- 702. — In general.
- 703. — Purpose.
- 704. — Validity.
- 705. — Retroactive operation.
- 706. What law governs.
- 707. Preemption by federal law.
- 708. Scope of inquiry.

**(B) FOREIGN DECREES AND ORDERS.**

- 715. In general.
- 716. Nature of decree or order entitled to recognition.
- 717. — In general.
- 718. — Dissolution or divorce.
- 719. Full faith and credit, in general.
- 720. Validity in general.
- 721. Jurisdiction to enter decree.
- 722. Finality of foreign decree.
- 723. Duty to recognize foreign decree.
- 724. Res judicata and collateral estoppel.
- 725. Authority to modify foreign decree.
- 726. Grounds for modifying foreign decree.

**(C) JURISDICTION OF FORUM COURT.**

- 730. In general.
- 731. Best interests and welfare of child.
- 732. Current location of child.
- 733. Residence or domicile of child or parent.
- 734. Minimum contacts.
- 735. Significant connection.
- 736. "Home state" of child.
- 737. Wrongful conduct in general.
- 738. Removal to another state.
- 739. Agreement of parties.
- 740. Jurisdiction of particular forum courts.
- 741. — In general.
- 742. — Personal jurisdiction.

**X. INTERSTATE ISSUES.(Cont'd)**

- 743. — Subject-matter jurisdiction.
- 744. Exclusive and concurrent jurisdiction of forum court.
- 745. Continuing jurisdiction.
- 746. Determination as to assumption of jurisdiction.
- 747. Discretion in assuming jurisdiction.
- 748. Pending proceeding in foreign jurisdiction.
- 749. Jurisdiction of foreign tribunal.
- 750. Yielding of jurisdiction by foreign tribunal.
- 751. Convenience of forum.
- 752. Communication with foreign tribunal.
- 753. Emergency jurisdiction.

**(D) PROCEEDINGS AND RELIEF.**

- 762. In general.
- 763. Venue.
- 764. Time for proceedings.
- 765. Parties; intervention.
- 766. Process.
- 767. Appearance.
- 768. Pleading.
- 769. — In general.
- 770. — Issues, proof and variance.
- 771. Appointment of investigators.
- 772. Evidence.
- 773. — In general.
- 774. — Admissibility.
- 775. — Burden of proof.
- 776. — Presumptions.
- 777. — Degree of proof.
- 778. — Weight and sufficiency.
- 779. Hearing.
- 780. Findings.
- 781. Judgment and relief.
- 782. — In general.
- 783. — Disposition of child.
- 784. — Visitation and joint custody.
- 785. — Conditions.
- 786. — Stay of proceedings in forum.
- 787. — Stay of proceedings in foreign tribunal.
- 788. Operation and effect.
- 789. Modification.

**76D. CHILD CUSTODY****XI. INTERNATIONAL ISSUES.**

- 800. In general.
- 801. What law governs.
- 802. Constitutional and statutory provisions and treaties.
- 803. Grounds and factors in general.
- 804. Habitual residence.
- 805. Recognition of foreign decree.
- 806. Grave risk.
- 807. Acquiescence to removal.
- 808. Return of child.
- 809. Wrongful retention or removal.
- 810. Defenses.
- 811. Settled in environment.
- 812. Best interests of child.
- 813. Abandonment.
- 814. Proceedings in general.
- 815. State or federal court; removal.
- 816. Jurisdiction.
- 817. Venue.
- 818. Pleading.
- 819. Process.
- 820. Evidence.
- 821. — In general.
- 822. — Admissibility.
- 823. — Burden of proof.
- 824. — Presumptions.
- 825. — Degree of proof.
- 826. — Weight and sufficiency.
- 827. Hearing.
- 828. Findings.
- 829. Judgment.
- 830. Modification.

**XII. ENFORCEMENT.**

- 850. In general.
- 851. Contempt.
- 852. — In general.
- 853. — Excuses and defenses.
- 854. — Visitation.
- 855. Jurisdiction.
- 856. Venue.
- 857. Time for proceedings.
- 858. Parties.
- 859. Process.
- 860. Appearance.
- 861. Pleading.
- 862. — In general.
- 863. — Issues, proof and variance.

**XII. ENFORCEMENT.(Cont'd)**

- 864. Evidence.
- 865. — In general.
- 866. — Admissibility.
- 867. — Burden of proof.
- 868. — Presumptions.
- 869. — Degree of proof.
- 870. — Weight and sufficiency.
- 871. Hearing.
- 872. Judgment or order.
- 873. Operation and effect of judgment or order.
- 874. Relief granted.

**XIII. APPEAL OR JUDICIAL REVIEW.**

- 900. In general.
- 901. Jurisdiction.
- 902. Decisions reviewable.
- 903. Right of review and parties.
- 904. Presentation and reservation of grounds of review.
- 905. Transfer of cause and proceedings in general.
- 906. Effect of appeal.
- 907. Record.
- 908. Assignment of errors and briefs.
- 909. Dismissal.
- 910. — In general.
- 911. — Mootness of appeal.
- 912. Hearing and rehearing.
- 913. Review.
- 914. — In general.
- 915. — Matters or evidence considered.
- 916. — Questions considered.
- 917. — Mootness of issues.
- 918. — Estoppel to raise particular issue.
- 919. — Trial de novo.
- 920. — Presumptions.
- 921. — Discretion.
  - (1). In general.
  - (2). Joint custody.
  - (3). Visitation.
  - (4). Modification.
  - (5). Grandparents.
- 922. — Questions of fact and findings of court.
  - (1). In general.
  - (2). Credibility of witnesses.
  - (3). Joint custody.

**76E. CHILD SUPPORT****XIII. APPEAL OR JUDICIAL REVIEW.**(Cont'd)

- (4). Visitation.
- (5). Modification.
- (6). Grandparents.
- 923. — Harmless error.
  - (1). In general.
  - (2). Joint custody.
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- 940. In general.
- 941. Discretion.
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- 945. Professionals.
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- 948. — Professionals.
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- 950. Proceedings in general.
- 951. Evidence.
- 952. — In general.
- 953. — Necessity of expert testimony.
- 954. Hearing.
- 955. Findings.
- 956. Decision and order.
- 957. Operation and effect.
- 958. Modification.
- 959. Enforcement.

**XV. CUSTODIAL INTERFERENCE.****(A) IN GENERAL.**

- 965. In general.
- 966. Existence of cause of action.
- 967. — In general.
- 968. — Alienation of affections.
- 969. Elements, grounds, and defenses.
- 970. — In general.
- 971. — Right to custody.
- 972. — Knowledge or notice of right to custody.
- 973. — Injury to plaintiff.
- 974. — Knowledge or participation of parent or other alleging right to custody.

**XV. CUSTODIAL INTERFERENCE.**(Cont'd)

- 975. — Consent of child.
- 976. — Privilege.
- 977. Persons entitled to sue.
- 978. — In general.
- 979. — Waiver by claim of wages.

**(B) PROCEEDINGS.**

- 980. In general.
- 981. Nature of action.
- 982. Pleadings.
- 983. Evidence.
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**(C) JUDGMENT AND RELIEF.**

- 986. In general.
- 987. Judgment.
- 988. Damages.
- 989. — In general.
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**76E. CHILD SUPPORT****SUBJECTS INCLUDED**

- Support of children by parents or other responsible persons
- Duties of stepparents and grandparents as to child support
- Child support obligations pending or following divorce or dissolution of marriage
- Abandonment and neglect to support
- Enforcement of child support obligations

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Actions for recovery of public assistance benefits paid, see PUBLIC ASSISTANCE
- Actions for the recovery of federal disability benefits paid, see SOCIAL SECURITY
- Effect of bankruptcy, see BANKRUPTCY



**76E. CHILD SUPPORT**

Government assistance to needy and dependent children, see PUBLIC ASSISTANCE

Support obligation upon termination of parental rights, see INFANTS

Support obligations as to abused, dependent, abandoned children, see also INFANTS

Support obligations as to delinquent or unruly children, see INFANTS

Support of Native American children under laws and treaties peculiar to them, see INDIANS

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3. — In general.
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23. — In general.
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42. Separation of parents.
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**76E. CHILD SUPPORT****III. FACTORS CONSIDERED.(Cont'd)**

- 48. — Ability to assume obligation beyond that which court may impose.
- 49. — Ambiguity or vagueness.
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- 52. — Education.
- 53. — Tax exemptions.
- 54. — Merger of agreement and judgment.
- 55. Reimbursement to person providing support.
- 56. Divorce, dissolution of marriage, or other proceeding pending.
- 57. Effect of divorce, dissolution of marriage, or annulment.
- 58. — In general.
- 59. — Judgment silent as to support duty.
- 60. — Effect of custody award.
- 61. — Effect of support award on further liability for support.
- 62. Needs of child and ability of parent to pay.
- 63. Assisted reproduction; surrogate parenting.

**(B) FACTORS RELATING TO CUSTODIANS AND OBLIGORS.**

*See ⚡62 for both needs of child and ability of obligor to pay.*

- 70. In general.
- 71. Personal condition.
- 72. — In general.
- 73. — Age.
- 74. — Health; physical disabilities.
- 75. — Mental condition.
- 76. Misconduct.
- 77. — In general.
- 78. — Causing need for additional support.
- 79. — Squandering resources.
- 80. Fault for divorce or dissolution of marriage.
- 81. Deprivation of visitation or custody.
- 82. Financial resources in general.
- 83. Expenses and financial strain.  
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- 84. Other support obligations.
- 85. Assets, investments, and holdings.
- 86. Income.
- 87. — In general.

**III. FACTORS CONSIDERED.(Cont'd)**

- 88. — Voluntary unemployment or under-employment.
- 89. — Imputed income of obligor.
- 90. — Imputed income of custodian.
- 91. — Calculation.
- 92. Welfare benefits.
- 93. Retirement benefits.
- 94. Social security benefits.
- 95. Disability benefits.
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- 97. Income or wealth of cohabitant, partner, or new spouse.
- 98. Lotteries and gambling winnings.
- 99. Miscellaneous payments received.

**(C) FACTORS RELATING TO CHILD.**

*See ⚡62 for both needs of child and ability of obligor to pay.*

- 100. In general.
- 101. Age.
- 102. — In general.
- 103. — Adult children.
- 105. Income.
- 106. Social security benefits paid to or for child.
- 107. Wealth.
- 108. Child's estate or trust.
- 109. Health.
- 110. — In general.
- 111. — Adult children.
- 112. Medical expenses.
- 113. — In general.
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- 117. — Private school.
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- 119. — Post-secondary education.
- 120. — Adult children.
- 121. Day care expenses.
- 122. Extracurricular expenses.
- 123. Misconduct of child.
- 124. Child's counsel fees.
- 125. Actions of child inconsistent with maintaining relation.

**IV. AMOUNT AND INCIDENTS OF AWARD.**

- 140. In general.
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**76E. CHILD SUPPORT****IV. AMOUNT AND INCIDENTS  
OF AWARD.(Cont'd)****(2). Discretion.**

- 141. Tax consequences.
- 142. Validity of guidelines.
- 143. Applicability of guidelines.
- 144. Retroactive effect of guidelines.
- 145. Incomes outside guidelines range.
- 146. Construction, operation, and effect of guidelines.
- 147. Adjustments to guidelines.
- 148. Exceptions and deviations from guidelines in general.
- 149. Extraordinary expenses in general.
- 150. Time of taking effect in general.
- 150.1. Time of taking effect as to nonmarital children.
- 150.2. Birth expenses.
- 151. Amount of award pending divorce or dissolution proceedings.
- 152. Security for payment in general.
- 153. Trusts.
- 154. Insurance.
- 155. — In general.
- 156. — Life insurance on obligor.
- 158. — Insurance on child.
- 159. Excessiveness in general.
- 160. Inadequacy in general.
- 161. Automatic or built-in adjustments.
- 162. — In general.
- 163. — Inflation.
- 164. — Need for definiteness; validity.
- 165. Credits and offsets in general.

**V. PROCEEDINGS.****(A) IN GENERAL.**

- 170. In general.
- 171. Nature of child support proceedings.
- 172. Jurisdiction.
- 173. — In general.
- 174. — Domicile of obligor.
- 175. — Domicile of child.
- 176. Venue.
- 177. Time for proceedings.
- 178. Parties.
- 179. Standing.
- 180. Process.
- 181. Discovery.
- 182. — In general.

**V. PROCEEDINGS.(Cont'd)**

- 183. — Financial records and reports.
- 184. — Income tax returns.
- 186. Pleading.
- 187. — In general.
- 188. — Issues, proof, and variance.
- 189. Administrative proceedings.

**(B) EVIDENCE.**

- 190. In general.
- 191. Admissibility.
- 192. Burden of proof.
- 193. Presumptions.
- 194. — In general.
- 195. — Income of obligor.
- 196. — Guidelines.
- 197. Degree of proof.
- 198. Weight and sufficiency.
- 199. — In general.
- 200. — Needs of child.
- 201. — Ability of obligor to pay.
- 202. — Amount.

**(C) HEARING.**

- 210. In general.
- 211. Reference.
- 212. Questions of law or fact.
- 213. Findings and verdict by jury.
- 214. Decision and findings by court.
- 215. Decision, findings, or verdict as to guidelines.
- 216. New trial or rehearing.

**(D) JUDGMENT.**

- 220. In general.
- 221. Amendment and clarification.
- 222. Conditions.
- 223. Relief granted.
- 224. Operation and effect.
- 224.1. — In general.
- 224.2. — As to parentage.
- 225. Res judicata.
- 226. Collateral estoppel and issue preclusion.

**VI. MODIFICATION.**

*Outright termination, see VII; interstate or international issues, see X and XI.*

**(A) IN GENERAL.**

- 230. In general.

**76E. CHILD SUPPORT****VI. MODIFICATION.(Cont'd)**

- 231. Discretion.
- 232. Power to modify.
- 233. Necessity of change in circumstances.
- 234. Materiality of change.
- 235. Matters already considered.

**(B) PARTICULAR FACTORS AND GROUNDS.****1. IN GENERAL.**

- 236. In general.
- 237. Separation of parents.
- 238. Contracts relating to support.
- 239. — In general.
- 240. — Effect of previous agreement.
- 241. — Effect of contractual provision barring modification.
- 242. — Agreement to modify.
- 243. Reimbursement to person providing support.
- 244. Divorce, dissolution of marriage, or other proceeding pending.

**2. FACTORS RELATING TO OBLIGORS.**

- 250. In general.
- 251. Health; physical disabilities.
- 252. Mental condition.
- 253. Misconduct.
- 254. Financial condition in general.
- 255. Other support obligations.
- 256. Assets, investments, and holdings.
- 257. Income.
- 258. — In general.
- 259. — Voluntary unemployment or underemployment.
- 260. — Imputed income.
- 261. — Calculation.
- 262. Social security benefits.
- 263. Disability benefits.
- 264. Workers' compensation benefits.
- 265. Income or wealth of cohabitant, paramour, or new spouse.
- 266. Miscellaneous payments received.

**3. FACTORS RELATING TO CUSTODIAN.**

- 270. In general.
- 271. Health; disabilities.
- 272. Misconduct.
- 273. Deprivation of custody and visitation violations.

**VI. MODIFICATION.(Cont'd)**

- 274. Financial condition in general.
- 275. Assets, investments, and holdings.
- 276. Income.
- 277. — In general.
- 278. — Voluntary unemployment or underemployment.
- 279. — Imputed income.
- 280. — Calculation.
- 281. Welfare benefits.
- 282. Social security benefits.
- 283. Income or wealth of paramour, cohabitant, or new spouse.
- 284. Miscellaneous payments received.
- 285. Other support obligations.

**4. FACTORS RELATING TO CHILD.**

- 290. In general.
- 291. Age of child.
- 292. — In general.
- 293. — Adult children.
- 294. Health.
- 295. Income.
- 296. Social security benefits paid to or for child.
- 297. Wealth.
- 298. Medical expenses.
- 299. — In general.
- 300. — Mental health.
- 301. Education.
- 302. — In general.
- 303. — Private school.
- 304. — Post-secondary education.
- 305. Day care expenses.
- 306. Actions of child inconsistent with maintaining relation.
- 307. Extracurricular activities.

**(C) PROCEEDINGS.**

- 320. In general.
- 321. Jurisdiction.
- 322. Venue.
- 323. Time for proceedings.
- 324. Parties.
- 325. Intervention.
- 326. Process.
- 327. Appearance.
- 328. Reports and recommendations.
- 329. Discovery.

**76E. CHILD SUPPORT****VI. MODIFICATION.(Cont'd)**

- 330. Pleading.
- 331. — In general.
- 332. — Issues, proof and variance.
- 333. Evidence.
- 334. — In general.
- 335. — Admissibility.
- 336. — Burden of proof.
- 337. — Presumptions.
- 338. — Degree of proof.
- 339. — Weight and sufficiency.
  - (1). In general.
  - (2). Change in circumstances.
  - (3). Obligor's income or financial condition.
  - (4). Custodian's income or financial condition.
  - (5). Amount.
- 340. Hearing.
- 341. Findings.
- 342. Judgment.
- 343. Operation and effect.

**(D) AMOUNT AND INCIDENTS OF AWARD.**

- 350. In general.
- 351. Tax consequences.
- 352. Validity of guidelines.
- 353. Retroactive effect of guidelines.
- 354. Applicability of guidelines.
- 355. Incomes outside guidelines range.
- 356. Construction, operation, and effect of guidelines.
- 357. Exceptions and deviations from guidelines in general.
- 358. Expenses.
  - (1). In general.
  - (2). Medical.
- 359. Amount of award pending divorce or dissolution proceedings.
- 360. Modification of security for payment.
- 361. Insurance.
- 362. Excessiveness of amount.
- 363. Inadequacy of amount.
- 364. Time of taking effect; retrospective modification.

**VII. TERMINATION.**

*Termination of support duty upon adoption, see ⚡33.*

- 375. In general.

**VII. TERMINATION.(Cont'd)**

- 376. Ability of non-obligor parent or custodian to support child.
- 377. — In general.
- 378. — Marriage or other cohabitation arrangements.
- 379. Death of obligor.
- 380. Military service of obligor or custodian.
- 381. Agreements, contracts, and stipulations.
- 382. — In general.
- 383. — Overriding state definition of majority.
- 384. — Abandoning visitation, etc. in exchange for termination of obligation.
- 385. — Education.
- 386. Emancipation of child in general.
- 387. Marriage of child.
- 388. Military service of child.
- 389. Age.
- 390. — In general.
- 391. — Construction and operation of decree.
- 392. — Change in state age of majority.
- 393. Education.
- 394. Deprivation of custody or visitation rights.
- 395. Abandonment of relation with non-obligor parent or custodian.
- 396. Assumption of custody by obligor.
- 397. Misconduct of non-obligor adult.
- 398. Life insurance.
- 399. Proceedings.
- 400. Evidence.
- 401. — In general.
- 402. — Admissibility.
- 403. — Burden of proof.
- 404. — Presumptions.
- 405. — Degree of proof.
- 406. — Weight and sufficiency.
- 407. Hearing.
- 408. Findings.
- 409. Judgment.
 

*Includes clarity of original order as to date of expiration or termination.*

**VIII. PAYMENT.**

- 425. In general.
- 426. Timeliness of payment.
- 427. Security to ensure payment.
- 428. Insurance coverage.

**76E. CHILD SUPPORT****VIII. PAYMENT.(Cont'd)**

- 429. Amount.
- 430. Form of payment.
- 431. Evidence.

**IX. ENFORCEMENT.**

*Modification upon noncompliance, see VI.*

- 440. In general.
- 441. Discretion.
- 442. Garnishment and wage execution.
- 443. Contempt.
- 444. — In general.
- 445. — Purging contempt.
- 446. — Existence of other remedy.
- 447. Arrearages; retroactive modification.
- 448. — In general.
- 449. — Vesting of right to unpaid support.
- 450. — Amount owed.
- 451. — Limitations and laches.
- 452. — Estoppel and waiver.  
*Exclude agreement, see ¶456; exclude misconduct if waiver or estoppel absent, see ¶457.*
- 453. — Interest.
- 454. — Credits for amounts paid or property transferred.
- 455. — Existence of other remedy.
- 456. — Agreements.
- 457. — Conduct and living arrangement of custodian.
- 458. — Circumstances of obligor.
- 459. — Other particular defenses or grounds for reduction of arrearages.
- 460. — Emancipation or majority.
- 461. — Increase in amount owed.
- 462. Execution.
- 463. Liens.
- 464. Attachment.
- 465. Administrative enforcement; orders and proceedings.
- 466. License suspension or revocation.
- 467. Tax withholding.
- 468. Child custody and visitation.
- 469. Proceedings in general.
- 470. Jurisdiction.
- 471. Venue.
- 472. Time for proceedings.
- 473. Parties.
- 474. Process and notice.
- 475. Appearance.
- 476. Examinations and reports.

**IX. ENFORCEMENT.(Cont'd)**

- 477. Discovery.
- 478. Pleading.
- 479. — In general.
- 480. — Issues, proof and variance.
- 481. Evidence.
- 482. — In general.
- 483. — Admissibility.
- 484. — Burden of proof.
- 485. — Presumptions.
- 486. — Degree of proof.
- 487. — Weight and sufficiency.
- 488. Hearing.
- 489. — In general.
- 490. — Necessity of and right to a hearing.
- 491. — Counsel.
- 492. — Questions of law and fact.
- 493. — Instructions.
- 494. Findings and verdict.
- 495. Judgment and order.
- 496. — In general.
- 497. — Incarceration.
- 498. Operation and effect.

**X. INTERSTATE ISSUES.**

- 500. In general.
- 501. Constitutional and statutory provisions.
  - (1). In general.
  - (2). Validity.
  - (3). Purpose.
  - (4). Retroactive operation.
- 502. What law governs.
- 503. Preemption.
- 504. Discretion.
- 505. Duty to support.
- 506. Foreign decree or proceeding.
  - (1). In general.
  - (2). Full faith and credit in general.
  - (3). Validity of foreign judgment or decree.
  - (4). Jurisdiction of foreign tribunal to enter award.
  - (5). Finality of foreign decree.
- 507. Jurisdiction of forum court to act.
- 508. Enforcement of foreign judgments.
  - (1). In general.
  - (2). Grounds and defenses.
  - (3). Proceedings in general.
  - (4). Process.

**76E. CHILD SUPPORT****X. INTERSTATE ISSUES.(Cont'd)**

- (5). Evidence.
- 509. Modification of foreign judgments.
  - (1). In general.
  - (2). Grounds and defenses.
  - (3). Proceedings.
  - (4). Evidence.
- 510. Stipulations and agreements.

**XI. INTERNATIONAL ISSUES.**

- 525. In general.
- 526. Discretion.
- 527. Treaties and constitutional, statutory, and other regulatory provisions.
- 528. — In general.
- 529. — Validity.
- 530. — Purpose.
- 531. — Retroactive operation.

**XII. APPEAL OR JUDICIAL REVIEW.**

- 535. In general.
- 536. Jurisdiction.
- 537. Decisions reviewable.
- 538. Right of review and parties.
- 539. Presentation and reservation of grounds of review.
- 540. Transfer of cause and proceedings in general.
- 541. Effect of appeal.
- 542. Record.
- 543. Assignment of errors and briefs.
- 544. Dismissal.
- 545. — In general.
- 546. — Mootness of appeal.
- 547. Hearing and rehearing.
- 548. Review.
- 549. — In general.
- 550. — Matters or evidence considered.
- 551. — Questions considered.
- 552. — Mootness of issues.
- 553. — Estoppel to raise particular issue.
- 554. — Trial de novo.
- 555. — Presumptions and burden of proof.
- 556. — Discretion.
  - (1). In general.
  - (2). Amount.
  - (3). Modification.
  - (4). Termination.

**XII. APPEAL OR JUDICIAL REVIEW.(Cont'd)**

- (5). Enforcement; arrearages; contempt.
- 557. — Questions of fact and findings of court.
  - (1). In general.
  - (2). Credibility of witnesses.
  - (3). Amount.
  - (4). Modification.
  - (5). Termination.
  - (6). Enforcement; arrearages; contempt.
- 558. — Harmless error.
  - (1). In general.
  - (2). Amount.
  - (3). Modification.
  - (4). Enforcement; arrearages; contempt.
- 559. Determination and disposition of cause.

**XIII. COSTS.**

- 600. In general.
- 601. Discretion.
- 602. Grounds and defenses in general.
- 603. Attorney fees.
- 604. Expert witnesses.
- 605. Professionals.
- 606. Amount.
- 607. — In general.
- 608. — Professionals and experts.
- 609. — Attorney fees.
- 610. Proceedings in general.
- 611. Evidence.
- 612. — In general.
- 613. — Necessity of expert testimony.
- 614. Hearing.
- 615. Findings.
- 616. Decision or order.
- 617. Operation and effect of decision or order.
- 618. Modification.
- 619. Enforcement.

**XIV. ABANDONMENT OR NEGLECT TO SUPPORT.**

- 650. In general.
- 651. Nature of proceeding.
- 652. Abandonment or neglect to support.
- 653. — In general.

**78. CIVIL RIGHTS****XIV. ABANDONMENT OR NEGLECT  
TO SUPPORT.(Cont'd)**

- 654. — Ability to pay.
- 655. Jurisdiction.
- 656. Indictment and information.
- 657. Evidence.
- 658. — In general.
- 659. — Admissibility.
- 660. — Burden of proof.
- 661. — Presumptions.
- 662. — Degree of proof.
- 663. — Weight and sufficiency.
- 664. Hearing.
- 665. — In general.
- 666. — Questions of law and fact.
- 667. — Instructions.
- 668. — Verdict and findings.
- 669. Judgment and remedy.

**78. CIVIL RIGHTS****SUBJECTS INCLUDED**

- General rights of personal nature; more particularly those rights protected by civil rights statutes
- Prohibitions against discrimination because of race, color, sex, or other reasons
- Federal and state remedies for violations of such rights or prohibitions
- Federal and state remedies for violations of constitutional rights

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

- Bivens actions, see UNITED STATES
- Conspiracies to violate civil rights, see CONSPIRACY
- Constitutional rights, substance and scope of, see CONSTITUTIONAL LAW
- Criminal prosecutions, restrictions on procedure, see CRIMINAL LAW
- Equal pay statutes, see LABOR AND EMPLOYMENT
- Federal courts, jurisdiction and venue, see FEDERAL COURTS

- Indian Civil Rights Act, see INDIANS ⇨213
- Interstate commerce, establishments and operations affecting, see COMMERCE
- Jury, right of trial by, see JURY
- Privacy, invasion of, see TORTS
- School desegregation and affirmative rights of disabled schoolchildren, see EDUCATION II(F) and II(G)
- Voting rights, see ELECTION LAW

- I. RIGHTS PROTECTED AND DISCRIMINATION PROHIBITED IN GENERAL, ⇨1001–1100.
- II. EMPLOYMENT PRACTICES, ⇨1101–1300.
- III. FEDERAL REMEDIES IN GENERAL, ⇨1301–1500.
- IV. REMEDIES UNDER FEDERAL EMPLOYMENT DISCRIMINATION STATUTES, ⇨1501–1700.
- V. STATE AND LOCAL REMEDIES, ⇨1701–1800.
- VI. OFFENSES AND PENALTIES, ⇨1801–1809.

**I. RIGHTS PROTECTED AND DISCRIMINATION PROHIBITED IN GENERAL.**

- 1001. In general.
- 1002. Constitutional and statutory provisions.
- 1003. — In general.
- 1004. — Purpose and construction in general.
- 1005. — Power to enact and validity.
- 1006. — Retrospective application.
- 1007. Bases of discrimination and classes protected.
- 1008. — In general.
- 1009. — Race, color, ethnicity, or national origin.
- 1010. — Religion.
- 1011. — Sex.
- 1012. — Sexual orientation or identity.
- 1013. — Marital, parental, or familial status.
- 1014. — Age.
- 1015. — Other particular bases or classes.
- 1016. Handicap, disability, or illness.
- 1017. — In general.
- 1018. — Elements of discrimination claims in general.



**78. CIVIL RIGHTS****I. RIGHTS PROTECTED AND DIS-CRIMINATION PROHIBITED  
IN GENERAL.(Cont'd)**

1019. — Who is disabled; what is disability.  
 (1). In general.  
 (2). Impairments in general; major life activities.  
 (3). Particular conditions, limitations, and impairments.  
 (4). Record of impairment.  
 (5). Perceived disability; “regarded as” claims.
1020. — Accommodations in general.
1021. — Physical access and mobility; carriers.  
*See also CARRIERS* ¶262.5.
1022. — Alcohol or drug use.
1023. — Communicable diseases.
1024. — Human immuno-deficiency virus and acquired immune deficiency syndrome.
1025. — Association or relationship with the disabled.
1026. Rights protected.
1027. — In general.
1028. — Due process of law and equal protection.  
*See also CONSTITUTIONAL LAW XXVI, XXVII.*
1029. — Other particular rights.
1030. Acts or conduct causing deprivation.
1031. — In general.
1032. — Particular cases and contexts.
1033. — Discrimination in general.  
 (1). In general.  
 (2). Particular cases and contexts.  
 (3). Affirmative action and reverse discrimination.
1034. — Common law or state law torts.
1035. — Assault and battery; personal injury and use of force.
1036. — Threats, intimidation, and harassment.
1037. — Malicious prosecution and false imprisonment; mental health commitments.  
*Criminal prosecutions and false arrests, see* ¶1088(4), 1088(5).
1038. — Defamation.

**I. RIGHTS PROTECTED AND DIS-CRIMINATION PROHIBITED  
IN GENERAL.(Cont'd)**

1039. — Failure to act or protect or to enforce law.
1040. Privacy.  
*See also CONSTITUTIONAL LAW XI.*
1041. Contracts, trade, and commercial activity.
1042. Insurance.  
*Public insurance programs, see* ¶1051. *Housing discrimination, see* ¶1080.
1043. Public accommodations.
1044. — In general.
1045. — Medical facilities and services.  
*Public services and public insurance programs, see* ¶1051.
1046. — Inns and restaurants; bars and taverns.
1047. — Theaters and places of exhibition or entertainment.
1048. — Public conveyances.
1049. — Place of business or public resort.
- 1049.5. — Websites and online services; internet.  
 (1). In general.  
 (2). Discrimination by reason of handicap, disability, or illness.
1050. — Private clubs or associations.
1051. Public services, programs, and benefits.  
*Public housing, see* ¶1082.
1052. — In general.
1053. — Discrimination by reason of handicap, disability, or illness.  
*See also* ¶1016.
1054. Public facilities.
1055. Publicly assisted programs.  
*Particular contexts, see also other lines in CIVIL RIGHTS I.*
1056. Courts and judicial proceedings.
1057. Child custody, support, and protection; parental rights.
1058. Jury service.
1059. Education.
1060. — In general.
1061. — Admission.  
*School desegregation, see EDUCATION II(F).*
1062. — Regulation of conduct; discipline.
1063. — Extracurricular activities; athletics.
1064. — Harassment; hostile environment.
1065. — Assault and abuse; use of force.

## 78. CIVIL RIGHTS

I. RIGHTS PROTECTED AND DIS-CRIMINATION PROHIBITED  
IN GENERAL.(Cont'd)

1066. — Sexual assault and abuse; sexual activity.
1067. — Sex discrimination.
- (1). In general.
- (2). Extracurricular activities; athletics.
- (3). Sexual harassment; sexually hostile environment.
- See also* ¶1066.
- (4). Discrimination against males.
- (5). Other particular cases and contexts.
1068. — Discrimination by reason of sexual orientation or identity.
1069. — Discrimination by reason of handicap, disability, or illness.
- See also* ¶1016. *Affirmative rights of disabled schoolchildren, see EDUCATION II(G).*
1070. — Other particular cases and contexts.
1071. Property rights.
1072. Permits, licenses, and certifications.
1073. Zoning, building, and planning; land use.
- Housing discrimination, see* ¶1081.
1074. Housing.
1075. — In general.
1076. — Sale; vendor and purchaser.
1077. — Lease or rental; landlord and tenant.
- 1077.5. — Condominiums and cooperative apartments; common interest communities.
1078. — Advertising.
1079. — Loans and financing.
1080. — Insurance.
1081. — Public regulation; zoning.
1082. — Public housing; public assistance.
- See also* LANDLORD AND TENANT X and UNITED STATES I(H).
1083. — Discrimination by reason of handicap, disability, or illness.
- See also* ¶1016.
1084. — Discrimination by reason of marital, parental, or familial status.
1085. — Interference, coercion, or intimidation; retaliation.
1086. — Harassment; hostile environment.

I. RIGHTS PROTECTED AND DIS-CRIMINATION PROHIBITED  
IN GENERAL.(Cont'd)

1087. — Other particular cases and contexts.
1088. Police, investigative, or law enforcement activities.
- Fourth Amendment issues, see ARREST, SEARCHES AND SEIZURES. Equal protection and due process, see CONSTITUTIONAL LAW ¶3780 et seq., 4520 et seq.*
- (1). In general.
- (2). Use of force in general.
- (3). Searches and seizures.
- (4). Arrest and detention.
- (5). Criminal prosecutions.
1089. Prisons.
- Eighth Amendment issues, see SENTENCING AND PUNISHMENT VII. Equal protection and due process, see CONSTITUTIONAL LAW ¶3780 et seq., 4520 et seq.*
1090. — In general.
1091. — Medical care and treatment.
1092. — Discipline and classification; grievances.
1093. — Use of force; protection from violence.
1094. — Access to courts.
1095. — Transfer.
1096. — Release.
1097. — Parole.
1098. — Other particular cases and contexts.

## II. EMPLOYMENT PRACTICES.

1101. In general.
1102. Constitutional and statutory provisions.
1103. — In general.
1104. — Purpose and construction in general.
1105. — Power to enact and validity.
1106. — Retrospective application.
1107. Discrimination by reason of race, color, ethnicity, or national origin, in general.
1108. Employers and employees affected.
- Vicarious and respondeat superior liability, see* ¶1334 et seq., 1528, 1736.
1109. — In general.
1110. — Nature and existence of employment relationship.
1111. — Number of employees.
1112. — Multiple entities; third parties.

**78. CIVIL RIGHTS**

*Corporate successor liability, see CORPORATIONS AND BUSINESS ORGANIZATIONS.*

- 1113. — Individuals as “employers”.
- 1114. — Exemptions.  
*Religious organizations, see also ¶1163.*
- 1115. — Territorial limitations.
- 1116. — Public employers and employees.
  - (1). In general.
  - (2). Individuals as “employers”.
  - (3). Exemptions.
- 1117. — Publicly assisted employers.
- 1118. Practices prohibited or required in general; elements.
- 1119. Adverse actions in general.
- 1120. Particular cases.
- 1121. Hiring.
- 1122. Discharge or layoff.
- 1123. Constructive discharge.
- 1124. Public employment.  
*Employers and employees affected, see ¶1116.*
- 1125. — In general.
- 1126. — Particular cases.
- 1127. — Hiring.
- 1128. — Discharge or layoff.
- 1129. Education, employment in.  
*Employers and employees affected, see ¶1108.*
- 1130. — In general.
- 1131. — Particular cases.
- 1132. — Hiring.
- 1133. — Discharge or layoff.
- 1134. — Tenure.
- 1135. Promotion, demotion, and transfer.
- 1136. Compensation and benefits.
- 1137. Motive or intent; pretext.
- 1138. Disparate treatment.
- 1139. “Pattern or practice” claims.
- 1140. Disparate impact.
- 1141. Seniority or merit system.
- 1142. Educational requirements; ability tests.
- 1143. Harassment; work environment.  
*See also ¶1123, 1161, 1181, 1194, 1198, 1213, 1224, 1250.*
- 1144. — In general.
- 1145. — Practices prohibited or required in general; elements.
- 1146. — Quid pro quo.
- 1147. — Hostile environment; severity, pervasiveness, and frequency.
- 1148. — Welcomeness; consent.
- 1149. — Knowledge or notice; preventive or remedial measures.

**II. EMPLOYMENT PRACTICES.(Cont'd)**

- 1150. — Other particular cases.
- 1151. Religious discrimination.  
*Employers and employees affected, see ¶1108.*
- 1152. — In general.
- 1153. — Practices prohibited or required in general; elements.
- 1154. — Beliefs and activities protected; sincerity.
- 1155. — Notice to employer.
- 1156. — Adverse actions in general.
- 1157. — Particular cases.
- 1158. — Motive or intent; pretext.
- 1159. — Disparate treatment.
- 1160. — Disparate impact.
- 1161. — Harassment; work environment.  
*See also ¶1123.*
- 1162. — Accommodations.
  - (1). In general.
  - (2). Particular cases.
- 1163. — Religious tests, preferences, or requirements; religious organizations.  
*See also ¶1114. Reverse discrimination generally, see ¶1232.*
- 1164. Sex discrimination in general.  
*Employers and employees affected, see ¶1108.*
- 1165. — In general.
- 1166. — Practices prohibited or required in general; elements.
- 1167. — Adverse actions in general.
- 1168. — Particular cases.
- 1169. — Public employment.
- 1170. — Education, employment in.
- 1171. — Motive or intent; pretext.
- 1172. — Disparate treatment.
- 1173. — Disparate impact.
- 1174. — Physical requirements or limitations.
- 1175. — Compensation; comparable worth.  
*Claims under the Equal Pay Act and similar statutes, see LABOR AND EMPLOYMENT XIII.*
- 1176. — Pregnancy; maternity.  
*Maternal, parental, or familial status, see ¶1195. Family and medical leave, see LABOR AND EMPLOYMENT VI.*
- 1177. — Personal appearance; hair and grooming.
- 1178. — Insurance and pensions.  
*Pregnancy leave computation, see ¶1176.*

## 78. CIVIL RIGHTS

## II. EMPLOYMENT PRACTICES.(Cont'd)

- 1179. — Discrimination against men; reverse discrimination.  
*Reverse discrimination generally, see ¶1232.*
- 1180. — Same-sex discrimination.  
*Sexual orientation or identity, see ¶1191.*
- 1181. Sexual harassment; work environment.  
*See also ¶1123.*
- 1182. — In general.
- 1183. — Practices prohibited or required in general; elements.
- 1184. — Quid pro quo.
- 1185. — Hostile environment; severity, pervasiveness, and frequency.
- 1186. — Harassment of men.  
*Reverse discrimination generally, see ¶1232.*
- 1187. — Same-sex harassment.  
*Sexual orientation or identity, see ¶1191.*
- 1188. — Welcomeness; consent.
- 1189. — Knowledge or notice; preventive or remedial measures.
- 1190. — Other particular cases.
- 1191. Discrimination by reason of sexual orientation or identity.  
*Employers and employees affected, see ¶1108.*  
*Same-sex discrimination generally, see ¶1180, 1187.*
- 1192. — In general.
- 1193. — Particular cases.
- 1194. — Harassment; work environment.  
*See also ¶1123.*
- 1195. Discrimination by reason of marital, parental, or familial status.  
*Employers and employees affected, see ¶1108. Pregnancy and maternity, see ¶1176.*
- 1196. — In general.
- 1197. — Particular cases.
- 1198. — Harassment; work environment.  
*See also ¶1123.*
- 1199. Age discrimination.  
*Employers and employees affected, see ¶1108.*
- 1200. — In general.
- 1201. — Practices prohibited or required in general; elements.
- 1202. — Adverse actions in general.
- 1203. — Particular cases.
- 1204. — Discharge or layoff.
- 1205. — Retirement in general.
- 1206. — Pensions, retirement plans, and employee benefits.  
*See also LABOR AND EMPLOYMENT VII.*
- 1207. — Public employment.
- 1208. — Education, employment in.
- 1209. — Motive or intent; pretext.

## II. EMPLOYMENT PRACTICES.(Cont'd)

- 1210. — Disparate treatment.
- 1211. — Disparate impact.
- 1212. — Pilots; airlines and other carriers.
- 1213. — Harassment; work environment.  
*See also ¶1123.*
- 1214. — Discrimination against the young; reverse discrimination.  
*Reverse discrimination generally, see ¶1232.*
- 1215. Discrimination by reason of handicap, disability, or illness.  
*Employers and employees affected, see ¶1108.*  
*Family and medical leave, see LABOR AND EMPLOYMENT VI.*
- 1216. — In general.
- 1217. — Practices prohibited or required in general; elements.
- 1218. — Who is disabled; what is disability.
  - (1). In general.
  - (2). Impairments in general; major life activities.
  - (3). Particular conditions, limitations, and impairments.
  - (4). Employment qualifications, requirements, or tests.
  - (5). Record of impairment.
  - (6). Perceived disability; “regarded as” claims.
- 1219. — Adverse actions in general.
- 1220. — Particular cases.
- 1221. — Motive or intent; pretext.
- 1222. — Disparate treatment.
- 1223. — Disparate impact.
- 1224. — Harassment; work environment.  
*See also ¶1123.*
- 1225. — Accommodations.
  - (1). In general; elements of accommodation claims.
  - (2). What are reasonable accommodations; factors considered.
  - (3). Particular cases.
  - (4). Requesting and choosing accommodations; interactive process; cooperation.
- 1226. — Alcohol or drug use.
- 1227. — Communicable diseases.
- 1228. — Human immuno-deficiency virus and acquired immune deficiency syndrome.
- 1229. — Confidentiality; disclosure.

**78. CIVIL RIGHTS****II. EMPLOYMENT PRACTICES.(Cont'd)**

1230. — Association or relationship with the disabled.
1231. Other particular bases of discrimination or classes protected.  
*Family and medical leave, see LABOR AND EMPLOYMENT VI.*
1232. Reverse discrimination.  
*See also* ¶1163, 1179, 1186, 1214, 1259. *Affirmative action as reverse discrimination, see* ¶1236.
1233. — In general.
1234. — Race, color, ethnicity, or national origin.
1235. — Other particular grounds.
1236. Affirmative action; remedial measures.  
*Affirmative action as relief ordered in particular cases, see* ¶1448, 1562, 1757. *Labor organizations, see* ¶1260.
1237. — In general.
1238. — Race, color, ethnicity, or national origin.
1239. — Sex.
1240. — Other particular grounds.
1241. Retaliation for exercise of rights.  
*Employers and employees affected, see* ¶1108. *Retaliation for exercise of rights not grounded in civil rights or anti-discrimination statutes, see LABOR AND EMPLOYMENT VIII and other topics which include employment matters.*
1242. — In general.
1243. — Practices prohibited or required in general; elements.
1244. — Activities protected.  
*Inclusive as to* ¶1241.
1245. — Adverse actions in general.
1246. — Particular cases.
1247. — Discharge or layoff.
1248. — Discipline.
1249. — Public employment.  
(1). In general.  
(2). Discharge or layoff.  
(3). Discipline.
1250. — Harassment; work environment.  
*See also* ¶1123.
1251. — Motive or intent; pretext.
1252. — Causal connection; temporal proximity.
1253. Labor organization practices; unions.  
*Labor organizations as employers, see other lines in CIVIL RIGHTS II.*
1254. — In general.
1255. — Discrimination by reason of race, color, ethnicity, or national origin.

**II. EMPLOYMENT PRACTICES.(Cont'd)**

1256. — Sex discrimination.
1257. — Age discrimination.
1258. — Other particular bases of discrimination.
1259. — Reverse discrimination.  
*Reverse discrimination generally, see* ¶1232.
1260. — Affirmative action; remedial measures.  
*Affirmative action generally, see* ¶1236.
1261. — Retaliation for exercise of rights.  
*Retaliation generally, see* ¶1241.
1262. Employment agencies; newspapers.
1263. Waiver; effect of labor contracts.  
*See also* COMPROMISE, SETTLEMENT, AND RELEASE.

**III. FEDERAL REMEDIES IN GENERAL.**

*See CIVIL RIGHTS IV for remedies under federal employment discrimination statutes, such as Title VII, the ADEA, the employment provisions of the ADA, and the Rehabilitation Act as applied to employment practices.*

1301. In general.
1302. Administrative agencies and proceedings.
1303. Civil actions in general.
1304. Nature and elements of civil actions.
1305. Substantive or procedural rights.
1306. Availability, adequacy, exclusivity, and exhaustion of other remedies.
1307. — In general.
1308. — Administrative remedies in general.
1309. — Education.
1310. — Property and housing.
1311. — Criminal law enforcement; prisons.
1312. — Employment practices.
1313. — Other particular cases and contexts.
1314. Adequacy, availability, and exhaustion of state or local remedies.
1315. — In general.
1316. — Administrative remedies in general.
1317. — Education.
1318. — Property and housing.
1319. — Criminal law enforcement; prisons.
1320. — Employment practices.

## 78. CIVIL RIGHTS

III. FEDERAL REMEDIES IN  
GENERAL.(Cont'd)

1321. — Other particular cases and contexts.
1322. Actions directly under Constitution.  
*Bivens actions, see UNITED STATES V(D)2.*
1323. Color of law.
1324. — In general.
1325. — State or territorial action, or individual or private action, in general.
1326. — Particular cases and contexts.
- (1). In general.
  - (2). Officers and public employees, in general.
  - (3). Private persons or corporations, in general.
  - (4). — In general.
  - (5). — Cooperation with state actor.
  - (6). Schools; education.
  - (7). Public support, license, or regulation; utilities and monopolies.
  - (8). Police or peace officers; prisons.
  - (9). Pursuit of private or judicial remedies.
  - (10). Attorneys and witnesses.
  - (11). Employment practices.
1327. — Federal law or action.  
*Bivens actions, see UNITED STATES V(D)2.*
1328. Persons protected and entitled to sue.
1329. — In general.
1330. — Private right of action.
- (1). In general.
  - (2). Education.
  - (3). Property and housing.
  - (4). Criminal law enforcement; prisons.
  - (5). Employment practices.  
*Who is an employee under employment discrimination statutes, see §1108.*
  - (6). Other particular cases and contexts.
1331. — Persons aggrieved, and standing in general.
- (1). In general.
  - (2). Education.
  - (3). Property and housing.
  - (4). Criminal law enforcement; prisons.
  - (5). Employment practices.  
*See note to §1330(5).*

III. FEDERAL REMEDIES IN  
GENERAL.(Cont'd)

- (6). Other particular cases and contexts.
1332. — Third party rights; decedents.
- (1). In general.
  - (2). Education.
  - (3). Property and housing.
  - (4). Criminal law enforcement; prisons.
  - (5). Employment practices.  
*See note to §1330(5).*
  - (6). Other particular cases and contexts.
1333. — Injury and causation.
- (1). In general.
  - (2). Education.
  - (3). Property and housing.
  - (4). Criminal law enforcement; prisons.
  - (5). Employment practices.  
*See note to §1330(5).*
  - (6). Other particular cases and contexts.
1334. Persons liable in general.
1335. — In general.
1336. — Vicarious or respondeat superior liability in general.
1337. — Education.
1338. — Property and housing.
1339. — Criminal law enforcement; prisons.
1340. — Employment practices.  
*Who is an employer under employment discrimination statutes, see §1108.*
1341. — Other particular cases and contexts.
1342. Liability of municipalities and other governmental bodies.
1343. — In general.
1344. — States and territories and their agencies and instrumentalities, in general.
1345. — Acts of officers and employees in general; vicarious liability and respondeat superior in general.
1346. — Education.
1347. — Property and housing.
1348. — Criminal law enforcement; prisons.
1349. — Employment practices.

**78. CIVIL RIGHTS***See note to ¶1340.*

- 1350. — Other particular cases and contexts.
- 1351. — Governmental ordinance, policy, practice, or custom.
  - (1). In general.
  - (2). Education.
  - (3). Property and housing.
  - (4). Criminal law enforcement; prisons.
  - (5). Employment practices.
- See note to ¶1340.*
- (6). Other particular cases and contexts.
- 1352. — Lack of control, training, or supervision; knowledge and inaction.
  - (1). In general.
  - (2). Education.
  - (3). Property and housing.
  - (4). Criminal law enforcement; prisons.
  - (5). Employment practices.
- See note to ¶1340.*
- (6). Other particular cases and contexts.
- 1353. Liability of public employees and officials.
- 1354. — In general.
- 1355. — Vicarious liability and respondeat superior in general; supervisory liability in general.
- 1356. — Education.
- 1357. — Property and housing.
- 1358. — Criminal law enforcement; prisons.
- 1359. — Employment practices.
- See note to ¶1340.*
- 1360. — Other particular cases and contexts.
- 1361. Liability of federal government and its agencies and officers.
  - Bivens actions, see UNITED STATES V(D)2.*
- 1362. — In general.
- 1363. — Employment practices.
- See note to ¶1340.*
- 1364. — Other particular cases and contexts.
- 1365. Defenses in general.
- 1366. — In general.
- 1367. — Education.
- 1368. — Property and housing.

**III. FEDERAL REMEDIES IN GENERAL.(Cont'd)**

- 1369. — Criminal law enforcement; prisons.
- 1370. — Employment practices.
- 1371. — Other particular cases and contexts.
- 1372. Privilege or immunity; good faith and probable cause.
- 1373. — In general.
- 1374. — Exercise of rights.
- 1375. — Attorneys, jurors, and witnesses; public defenders.
- 1376. — Government agencies and officers.
  - Officers as witnesses, see ¶1375.*
  - (1). In general.
  - (2). Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general.
  - (3). States and territories and their officers and agencies.
  - (4). Municipalities and counties and their officers.
  - (5). Schools.
  - (6). Sheriffs, police, and other peace officers.
  - (7). Prisons, jails, and their officers; parole and probation officers.
  - (8). Judges, courts, and judicial officers.
  - (9). Attorney General and prosecuting attorneys.
  - (10). Employment practices.
- 1377. Proceedings in general.
- 1378. Time to sue.
- 1379. — In general.
- 1380. — Education.
- 1381. — Property and housing.
- 1382. — Criminal law enforcement; prisons.
- 1383. — Employment practices.
- 1384. — Other particular cases and contexts.
- 1385. Parties.
- 1386. — In general.
- 1387. — Education.
- 1388. — Property and housing.
- 1389. — Criminal law enforcement; prisons.

## 78. CIVIL RIGHTS

III. FEDERAL REMEDIES IN  
GENERAL.(Cont'd)

1390. — Employment practices.
1391. — Other particular cases and contexts.
1392. Pleading.  
*General issues concerning construction of pro se or lay pleadings, see FEDERAL CIVIL PROCEDURE*  $\S$ 657.5(2, 3) and *PLEADING*  $\S$ 34(3.5).
1393. — In general.
1394. — Complaint in general.
1395. — Particular causes of action.
- (1). In general.
  - (2). Education.
  - (3). Property and housing.
  - (4). Criminal law enforcement; police and prosecutors.
  - (5). — In general.
  - (6). — Arrest, search, and detention.
  - (7). Prisons and jails; probation and parole.
  - (8). Employment practices.
1396. — Color of law; state action.
1397. — Issues, proof, and variance.
1398. — Defenses; immunity and good faith.
1399. Evidence in general.
1400. Presumptions, inferences, and burdens of proof.
1401. — In general.
1402. — Education.
1403. — Property and housing.
1404. — Criminal law enforcement; prisons.
1405. — Employment practices.
1406. — Other particular cases and contexts.
1407. — Defenses; immunity and good faith.
1408. Admissibility of evidence.
1409. — In general.
1410. — Education.
1411. — Property and housing.
1412. — Criminal law enforcement; prisons.
1413. — Employment practices.
1414. — Other particular cases and contexts.
1415. — Defenses; immunity and good faith.

III. FEDERAL REMEDIES IN  
GENERAL.(Cont'd)

1416. Weight and sufficiency of evidence.
1417. — In general.
1418. — Education.
1419. — Property and housing.
1420. — Criminal law enforcement; prisons.
1421. — Employment practices.
1422. — Other particular cases and contexts.
1423. — Defenses; immunity and good faith.
1424. Trial in general.
1425. Questions of law or fact.
1426. — In general.
1427. — Education.
1428. — Property and housing.
1429. — Criminal law enforcement; prisons.
1430. — Employment practices.
1431. — Other particular cases and contexts.
1432. — Defenses; immunity and good faith.
1433. Instructions.
1434. — In general.
1435. — Education.
1436. — Property and housing.
1437. — Criminal law enforcement; prisons.
1438. — Employment practices.
1439. — Other particular cases and contexts.
1440. — Defenses; immunity and good faith.
1441. Appointment of counsel.
1442. — In general.
1443. — Education.
1444. — Property and housing.
1445. — Criminal law enforcement; prisons.
1446. — Employment practices.
1447. — Other particular cases and contexts.
1448. Judgment and relief in general.
1449. Injunction.
1450. — In general.
1451. — Public accommodations or facilities.



**78. CIVIL RIGHTS****III. FEDERAL REMEDIES IN  
GENERAL.(Cont'd)**

- 1452. — Education.
- 1453. — Property and housing.
- 1454. — Criminal law enforcement; prisons.
- 1455. — Employment practices.
- 1456. — Other particular cases and contexts.
- 1457. — Preliminary injunction.
  - (1). In general.
  - (2). Public accommodations or facilities.
  - (3). Education.
  - (4). Property and housing.
  - (5). Criminal law enforcement; prisons.
  - (6). Employment practices.
  - (7). Other particular cases and contexts.
- 1458. Monetary relief in general.
- 1459. — In general.
- 1460. — Availability in general.
- 1461. — Nominal damages.
- 1462. — Grounds and subjects; compensatory damages.
- 1463. — Mental suffering, emotional distress, humiliation, or embarrassment.
- 1464. — Measure and amount.
- 1465. — Exemplary or punitive damages.
  - (1). In general.
  - (2). Government liability.
- 1466. Monetary relief in employment practices cases.
- 1467. — In general.
- 1468. — Availability in general.
- 1469. — Nominal damages.
- 1470. — Grounds and subjects; compensatory damages.
- 1471. — Back pay or lost earnings.
- 1472. — Mental suffering, emotional distress, humiliation, or embarrassment.
- 1473. — Measure and amount.
- 1474. — Exemplary or punitive damages.
  - (1). In general.
  - (2). Government liability.
- 1475. Enforcement.
- 1476. Costs.
- 1477. Attorney fees.
- 1478. — In general.

**III. FEDERAL REMEDIES IN  
GENERAL.(Cont'd)**

- 1479. — Proceedings, grounds, and objections in general.
- 1480. — Parties entitled or liable; immunity.
- 1481. — Public benefit; private attorneys general.
- 1482. — Results of litigation; prevailing parties.
- 1483. — Good or bad faith; misconduct.
- 1484. — Awards to defendants; frivolous, vexatious, or meritless claims.
- 1485. — Claims by prisoners.
- 1486. — Services or activities for which fees may be awarded.
- 1487. — Amount and computation.
- 1488. — Time expended; hourly rates.
- 1489. — Institutional, salaried, or public service attorneys; pro bono work.
- 1490. — Taxation.
- 1491. — Interim awards.
- 1492. Costs and fees on appeal.
- 1493. Civil actions by Attorney General.

**IV. REMEDIES UNDER FEDERAL EMPLOYMENT DISCRIMINATION STATUTES.**

*See CIVIL RIGHTS III for remedies under federal laws of general application, such as Sections 1981 and 1983, and for remedies for violations of federal constitutional rights.*

- 1501. In general.
 

*Family and medical leave, see LABOR AND EMPLOYMENT VI.*
- 1502. Existence of other remedies; exclusivity.
- 1503. Administrative agencies and proceedings.
- 1504. — In general.
- 1505. — Time for proceedings; limitations.
  - (1). In general.
  - (2). Periods applicable.
  - (3). Operation; accrual and computation.
  - (4). Effect; excuses in general.
  - (5). Waiver and estoppel.
  - (6). Tolling.
  - (7). Continuing violations; serial, ongoing, or related acts.
- 1506. — Charges and investigations.
- 1507. — Deferral to state agencies; time.

## 78. CIVIL RIGHTS

## IV. REMEDIES UNDER FEDERAL EMPLOYMENT DISCRIMINATION STATUTES.(Cont'd)

- 1508. — Subpoenas and demands for production.
- 1509. — Evidence, hearing, and determination.
- 1510. — Judicial review and enforcement of administrative decisions.
- 1511. Civil actions in general.
- 1512. Exhaustion of administrative remedies before resort to courts.
- 1513. — In general.
- 1514. — Particular cases.
- 1515. — Conference, conciliation, and persuasion; settlement.
- 1516. — Scope of administrative proceedings; like or related claims.
- 1517. — Parties in administrative proceedings.
- 1518. — Participation in administrative proceedings; cooperation and diligence.
- 1519. — Excuses; waiver and estoppel; futility.
- 1520. Exhaustion of state or local remedies.
- 1521. Persons protected and entitled to sue.  
*Who is an employee under employment discrimination statutes, see ¶1108.*
- 1522. — In general.
- 1523. — Right to sue letter or notice; official inaction.
- 1524. — Intent to sue notice.
- 1526. Persons liable.  
*Who is an employer under employment discrimination statutes, see ¶1108.*
- 1527. — In general.
- 1528. — Vicarious liability; respondeat superior.
- 1529. Defenses in general.
- 1530. Time for proceedings; limitations.
- 1531. Parties.
- 1532. Pleading.
- 1533. Evidence in general.
- 1534. Presumptions, inferences, and burden of proof.
- 1535. — In general.
- 1536. — Effect of prima facie case; shifting burden.
- 1537. — Sex discrimination.

## IV. REMEDIES UNDER FEDERAL EMPLOYMENT DISCRIMINATION STATUTES.(Cont'd)

- 1538. — Discrimination by reason of sexual orientation or identity.
- 1539. — Age discrimination.
- 1540. — Discrimination by reason of handicap, disability, or illness.
- 1541. — Retaliation claims.
- 1542. Admissibility of evidence; statistical evidence.
- 1543. Weight and sufficiency of evidence.
- 1544. — In general.
- 1545. — Prima facie case.
- 1546. — Educational requirements; ability tests.
- 1547. — Wages or salaries.
- 1548. — Promotion or transfer.
- 1549. — Sex discrimination.
- 1550. — Discrimination by reason of sexual orientation or identity.
- 1551. — Age discrimination.
- 1552. — Discrimination by reason of handicap, disability, or illness.
- 1553. — Retaliation claims.
- 1554. Trial in general.
- 1555. Questions of law or fact.
- 1556. Instructions.
- 1557. Appointment of counsel.
- 1558. Judgment in general.
- 1559. Relief.
- 1560. — In general.
- 1561. — Injunction in general.
- 1562. — Affirmative action; recruitment and hiring.
- 1563. — Reinstatement.
- 1564. — Assignment, transfer, or promotion.
- 1565. — Seniority rights.
- 1566. — Labor organization practices; collective bargaining agreements.
- 1567. — Apprenticeship or training programs.
- 1568. — Preliminary injunction.
- 1569. Monetary relief; restitution.
- 1570. — In general.
- 1571. — Back pay or lost earnings.
- 1572. — Mental suffering, emotional distress, humiliation, or embarrassment.

**78. CIVIL RIGHTS****IV. REMEDIES UNDER FEDERAL EMPLOYMENT DISCRIMINATION STATUTES.(Cont'd)**

- 1573. — Aggravation, mitigation, or reduction of loss.
- 1574. — Measure and amount.
- 1575. — Exemplary or punitive damages.
  - (1). In general.
  - (2). Measure and amount.
- 1576. — Liquidated damages.
  - (1). In general.
  - (2). Age discrimination.
- 1577. — Persons liable; apportionment.
- 1578. Relief from retaliation.
- 1579. — In general.
- 1580. — Injunction in general.
- 1581. — Reinstatement.
- 1582. — Preliminary injunction.
- 1583. — Monetary relief.
  - (1). In general.
  - (2). Back pay or lost earnings.
  - (3). Mental suffering, emotional distress, humiliation, or embarrassment.
  - (4). Aggravation, mitigation, or reduction of loss.
  - (5). Measure and amount.
  - (6). Exemplary or punitive damages.
  - (7). — In general.
  - (8). — Measure and amount.
  - (9). Liquidated damages.
  - (10). Persons liable; apportionment.
- 1584. Costs.
- 1585. Attorney fees.
- 1586. — In general.
- 1587. — Proceedings, grounds, and objections in general.
- 1588. — Parties entitled or liable; immunity.
- 1589. — Public benefit; private attorneys general.
- 1590. — Results of litigation; prevailing parties.
- 1591. — Good or bad faith; misconduct.
- 1592. — Awards to defendants; frivolous, vexatious, or meritless claims.
- 1593. — Services or activities for which fees may be awarded.
- 1594. — Amount and computation.
- 1595. — Time expended; hourly rates.

**IV. REMEDIES UNDER FEDERAL EMPLOYMENT DISCRIMINATION STATUTES.(Cont'd)**

- 1596. — Institutional, salaried, or public service attorneys; pro bono work.
- 1597. — Taxation.
- 1598. — Interim awards.
- 1599. Costs and fees on appeal.
- 1600. Civil actions by Attorney General.

**V. STATE AND LOCAL REMEDIES.**

- 1701. In general.
- 1702. What law governs.
- 1703. Federal preemption.  
*See also STATES.*
- 1704. Existence of other remedies; exclusivity.
- 1705. State or local administrative agencies and proceedings.
- 1706. — In general.
- 1707. — Jurisdiction and authority.
- 1708. — Time for proceedings; limitations.
- 1709. — Charges and investigations.
- 1710. — Evidence.
- 1711. — Hearing, determination, and relief; costs and fees.
- 1712. — Judicial review and enforcement of administrative decisions.
- 1713. Exhaustion of administrative remedies before resort to courts.
- 1714. — In general.
- 1715. — Employment practices.
- 1716. — Other particular cases and contexts.
- 1717. Civil actions in general.
- 1718. Right of action; nature and grounds.  
*See also* ⇨1703, 1704.
- 1719. — In general.
- 1720. — Employment practices.
- 1721. — Other particular cases and contexts.
- 1722. Conditions precedent; right-to-sue letters.  
*See also* ⇨1713.
- 1723. — In general.
- 1724. — Employment practices.
- 1725. — Other particular cases and contexts.
- 1726. Defenses in general.
- 1727. — In general.

**79. CLERKS OF COURTS****V. STATE AND LOCAL REMEDIES.(Cont'd)**

- 1728. — Employment practices.
- 1729. — Other particular cases and contexts.
- 1730. Time for proceedings; limitations.
- 1731. — In general.
- 1732. — Employment practices.
- 1733. — Other particular cases and contexts.
- 1734. Persons protected, persons liable, and parties.  
*Who is an employee or an employer under employment discrimination statutes, see ¶1108.*
- 1735. — In general.
- 1736. — Employment practices.
- 1737. — Other particular cases and contexts.
- 1738. Pleading.  
*General issues concerning construction of pro se or lay pleadings, see FEDERAL CIVIL PROCEDURE ¶657.5(2, 3) and PLEADING ¶34(3.5).*
- 1739. — In general.
- 1740. — Employment practices.
- 1741. — Other particular cases and contexts.
- 1742. Evidence.
- 1743. — In general.
- 1744. — Employment practices.
- 1745. — Other particular cases and contexts.
- 1746. Trial in general.
- 1747. Questions of law or fact.
- 1748. — In general.
- 1749. — Employment practices.
- 1750. — Other particular cases and contexts.
- 1751. Instructions.
- 1752. — In general.
- 1753. — Employment practices.
- 1754. — Other particular cases and contexts.
- 1755. Judgment and relief in general.
- 1756. — In general.
- 1757. — Employment practices.
- 1758. — Other particular cases and contexts.
- 1759. Injunction.
- 1760. — In general.
- 1761. — Employment practices.
- 1762. — Other particular cases and contexts.

**V. STATE AND LOCAL REMEDIES.(Cont'd)**

- 1763. Monetary relief.
- 1764. — In general.
- 1765. — Employment practices.
- 1766. — Other particular cases and contexts.
- 1767. Exemplary or punitive damages.
- 1768. — In general.
- 1769. — Employment practices.
- 1770. — Other particular cases and contexts.
- 1771. Costs and fees.
- 1772. — In general.
- 1773. — Employment practices.
- 1774. — Other particular cases and contexts.

**VI. OFFENSES AND PENALTIES.**

- 1801. In general.
- 1802. Constitutional and statutory provisions.
- 1803. — In general.
- 1804. — Purpose and construction in general.
- 1805. — Power to enact and validity.
- 1806. — Retrospective application.
- 1807. Penalties and forfeitures.
- 1808. Offenses.
- 1809. Prosecutions.

**79. CLERKS OF COURTS****SUBJECTS INCLUDED**

Officers of civil tribunals authorized to perform clerical functions, with incidental judicial powers, whether designated as clerks, prothonotaries, or by other titles

Appointment, qualification, tenure and removal of such officers

Ex officio and de facto clerks of courts

Their rights, powers, duties and liabilities

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Particular proceedings by or before clerks, see specific topics

**79. CLERKS OF COURTS**

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|--|--|
| <ol style="list-style-type: none"> <li>1. Nature of office.</li> <li>2. Creation and abolition of office.</li> <li>3. Appointment.</li> <li>4. Eligibility and qualification.</li> <li>5. De facto officers.</li> <li>6. Deputies and assistants.</li> <li>7. Term of office, vacancies, and holding over.</li> <li>8. Resignation, suspension, or removal.</li> <li>9. Title to and possession of office.</li> <li>10. Compensation and fees of clerks of state courts.</li> <li>11. — In general.</li> <li>12. — Statutory provisions.</li> <li>13. — Joinder of causes or parties and consolidation.</li> <li>14. — Writs, process, and notices.</li> <li>15. — Oaths and affirmations.</li> <li>16. — Recognizances, bonds, undertakings, and acknowledgments.</li> <li>17. — Filing papers.</li> <li>18. — Entries and records in general.</li> <li>19. — Trial and docket fees.</li> <li>20. — Entry of judgments, decrees, or orders.</li> <li>21. — Certificates, returns, and reports in general.</li> <li>22. — Certificates as to attendance or fees of jurors or witnesses.</li> <li>23. — Copies and duplicates.</li> <li>24. — Certified copies and exemplifications.</li> <li>25. — Searches.</li> <li>26. — Commissions.</li> <li>27. — Per diem compensation.</li> <li>28. — Office expenses, supplies, and clerk hire.</li> <li>29. — Special or extra services or expenses.</li> <li>30. — Persons liable in general.</li> <li>31. — Liability of state, county, or city.</li> <li>32. — Time for payment of fees.</li> <li>33. — Salaries.</li> <li>34. — Limitation of emoluments.</li> <li>35. — Accounting as to fees.</li> <li>36. — Penalties, and forfeiture of fees.</li> <li>37. — Recovery of fees or salary.</li> <li>38. Compensation and fees of clerks of United States courts.</li> <li>39. — In general.</li> </ol> | <ol style="list-style-type: none"> <li>40. — Statutory provisions.</li> <li>41. — Services in different courts.</li> <li>42. — Joinder of causes or parties and consolidation.</li> <li>43. — Writs, process, and notices.</li> <li>44. — Oaths and affirmations.</li> <li>45. — Depositions, and copies thereof.</li> <li>46. — Recognizances, bonds, undertakings, and acknowledgments.</li> <li>47. — Filing papers.</li> <li>48. — Entries and records.</li> <li>49. — Docket fees.</li> <li>50. — Certificates, returns, and reports in general.</li> <li>51. — Certificates as to attendance or fees of jurors or witnesses.</li> <li>52. — Copies, duplicates, and exemplifications.</li> <li>53. — Searches.</li> <li>54. — Commissions.</li> <li>55. — Per diem compensation.</li> <li>56. — Office expenses, supplies, and clerk hire.</li> <li>57. — Special or extra services or expenses.</li> <li>58. — Persons liable in general.</li> <li>59. — Liability of United States.</li> <li>60. — Time for payment of fees.</li> <li>61. — Accounting as to fees.</li> <li>62. — Recovery of fees or salary.</li> <li>63. Fees of clerks of territorial courts.</li> <li>64. Powers and proceedings in general.</li> <li>64.1. — In general.</li> <li>65. — Nature and extent of authority.</li> <li>66. — Judicial functions and proceedings.</li> <li>67. — Ministerial functions and acts.</li> <li>68. — Disqualification to act.</li> <li>69. Custody and care of records.</li> <li>70. Custody and care of funds.</li> <li>71. Summary remedies to compel action.</li> <li>72. Liabilities for negligence or misconduct.</li> <li>73. Liabilities on official bonds.</li> <li>73.1. — In general.</li> <li>74. — Breach or fulfillment of conditions.</li> <li>75. — Actions on bonds.</li> <li>76. Criminal responsibility.</li> </ol> |
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**82. COLLISION****82. COLLISION****SUBJECTS INCLUDED**

Striking together or other contact of vessels causing injury to person or property

Rules of navigation for preventing such collisions

Nature and extent of liability of vessels and their owners, claimants, etc. for such injuries

Suits for damages therefor

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Admiralty jurisdiction and procedure in general, see ADMIRALTY

Allision, see SHIPPING

Limitation of liability of shipowner, proceedings for, see SHIPPING

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- I. RULES AND PRECAUTIONS FOR PREVENTING COLLISIONS IN GENERAL, ¶1–26.
  - II. SAIL VESSELS MEETING OR CROSSING, ¶27–34.
  - III. STEAM VESSELS MEETING OR CROSSING, ¶35–42.
  - IV. STEAM VESSELS AND SAIL VESSELS, ¶43–49.
  - V. OVERTAKING VESSELS, ¶50–56.
  - VI. VESSELS IN TOW, ¶57–66.
  - VII. VESSELS AT REST, AT ANCHOR, OR AT PIERS, ¶67–74.
  - VIII. LIGHTS, SIGNALS, AND LOOK-OUTS, ¶75–79.
  - IX. FOG OR THICK WEATHER, ¶80–85.
  - X. NARROW CHANNELS, HARBORS, RIVERS, AND CANALS, ¶86–105.
  - XI. SPECIAL CIRCUMSTANCES AND ERRORS IN EXTREMIS, ¶106–110.
  - XII. SUITS FOR DAMAGES, ¶111–154.
    - (A) RIGHT OF ACTION AND DEFENSES, ¶111–115.
    - (B) PARTIES, ¶116.
    - (C) PLEADING, ¶117–121.
    - (D) EVIDENCE, ¶122–125.
    - (E) DAMAGES, ¶126–148.
    - (F) TRIAL OR HEARING, ¶149–150.
    - (G) JUDGMENT OR DECREE, ¶151–152.
    - (H) APPEAL, ¶153.
    - (I) COSTS, ¶154.

**I. RULES AND PRECAUTIONS FOR PREVENTING COLLISIONS IN GENERAL.**

1. Duty to avoid collision in general.
2. What law governs.
3. Usages of navigation.
4. General maritime law.
5. International regulations.
6. Statutory regulations.
7. Supervising inspectors' rules.
8. Local statutes and ordinances.
9. Local customs and usages.
10. Rules established by private authority.
11. Operation and effect of regulations.
12. Structure and condition of vessel.
13. Equipment of vessel.
14. Sufficiency of officers and crew.
15. Sufficiency of pilot.
16. Control and management of vessel in general.
17. Fault as cause of collision.
18. Proximate cause of collision.
19. Fault of both vessels.
20. Injury avoidable notwithstanding fault of other vessel.
21. Justification or excuse for fault.
22. Inevitable accident.
23. Inscrutable fault.
24. Statutory limitation of liability.
25. — In general.
26. — Harter act.

**II. SAIL VESSELS MEETING OR CROSSING.**

27. Relative positions and courses.
28. Duties of vessels meeting end on.
29. Duty to keep out of the way.
30. Duty of vessel having right of way.
31. Fault as cause of collision.
32. Both vessels in fault.
33. Presumptions and burden of proof as to fault.
34. Evidence as to fault.

**III. STEAM VESSELS MEETING OR CROSSING.**

35. Relative positions and courses.
36. Duties of vessels meeting end on.
37. Duty to keep out of the way.
38. Duty of vessel having right of way.
39. Fault as cause of collision.

**82. COLLISION****III. STEAM VESSELS MEETING  
OR CROSSING.(Cont'd)**

- 40. Both vessels in fault.
- 41. Presumptions and burden of proof as to fault.
- 42. Evidence as to fault.

**IV. STEAM VESSELS AND SAIL VESSELS.**

- 43. Duty of steam vessel.
- 44. Duty of sail vessel.
- 45. Fault as cause of collision.
- 46. Both vessels in fault.
- 47. Injury avoidable by steamer notwithstanding fault of sail vessel.
- 48. Presumptions and burden of proof as to fault.
- 49. Evidence as to fault.

**V. OVERTAKING VESSELS.**

- 50. Relative positions and courses.
- 51. Duty of overtaking vessel.
- 52. Duty of vessel overtaken.
- 53. Fault as cause of collision.
- 54. Both vessels in fault.
- 55. Presumptions and burden of proof as to fault.
- 56. Evidence as to fault.

**VI. VESSELS IN TOW.**

- 57. Control and management in general.
- 58. Duty of tug as to vessels other than tow.
- 59. Duty of tow as to vessels other than tug.
- 60. Duty of other vessels as to passing tow.
- 61. Fault as cause of collision.
- 62. Tug and tow both in fault.
- 63. Tug and colliding vessel both in fault.
- 64. Tow and colliding vessel both in fault.
- 65. Presumptions and burden of proof as to fault.
- 66. Evidence as to fault.

**VII. VESSELS AT REST, AT ANCHOR,  
OR AT PIERS.**

- 67. Vessels not under way in general.
- 68. Vessels drifting.
- 69. Vessels anchored.
- 70. Vessels moored.
- 71. Fault as cause of collision.
  - (1). In general.

**VII. VESSELS AT REST, AT ANCHOR,  
OR AT PIERS.(Cont'd)**

- (2). Fault of moving vessel.
- (3). Fault of vessel anchored, moored, or at rest.
- 72. Both vessels in fault.
  - (1). In general.
  - (2). Towing vessels and vessels in tow.
- 73. Presumptions and burden of proof as to fault.
- 74. Evidence as to fault.

**VIII. LIGHTS, SIGNALS, AND LOOKOUTS.**

- 75. Lights and other visible signals.
  - (.5). In general.
    - (1). Necessity and sufficiency in general.
    - (2). Steam vessels under way.
    - (3). Sail vessels under way.
    - (4). Pilot boats.
    - (5). Vessels not under command.
    - (6). Vessels at anchor, moored, or grounded.
    - (7). Flare-up lights or torches.
    - (8). Lights obscured.
    - (9). Duty to observe lights.
    - (10). Mistake as to lights.
    - (11). Fault as cause of collision.
    - (12). Both vessels at fault.
    - (13). Collision avoidable notwithstanding absence of lights.
- 76. Sound signals.
- 77. Lookouts.
- 78. Presumptions and burden of proof as to fault.
- 79. Evidence as to fault.

**IX. FOG OR THICK WEATHER.**

- 80. Precautions in general.
- 81. Signals and lookouts.
- 82. Speed and course.
  - (1). In general.
  - (2). Steam vessels.
  - (3). Sail vessels.
- 83. Both vessels in fault.
- 84. Presumptions and burden of proof as to fault.
- 85. Evidence as to fault.

**82. COLLISION****X. NARROW CHANNELS, HARBORS,  
RIVERS, AND CANALS.**

- 86. Entrance to channel or harbor.
- 87. Taking or discharging pilot.
- 88. Taking, making up, or discharging tow.
- 89. Separate channels or passages.
- 90. Navigation in channel or river in general.
- 91. Vessels meeting.
- 92. Vessels turning in channel.
- 93. Vessels crossing channel or river.
- 94. Overtaking vessels.
- 95. Towing vessels and vessels in tow.
  - (1). In general.
  - (2). Towing vessel in fault.
  - (3). Towing vessel and tow both in fault.
  - (4). Fault of vessel without tow.
  - (5). Fault of overtaking or passing vessel.
  - (6). Tow and colliding vessel both in fault.
  - (7). Towing vessel and colliding vessel both in fault.
- 96. Vessels approaching or leaving wharves or slips.
- 97. Vessels launched or sliding from ways.
- 98. Signals.
- 99. Lookouts.
- 100. Fog.
  - (1). In general.
  - (2). Speed, signals, and lookouts.
- 101. Obstructions by ice.
- 102. Both vessels in fault.
  - (1). In general.
  - (2). Vessels meeting.
  - (3). Vessels crossing.
  - (4). Overtaking vessels.
  - (5). Vessels turning.
  - (6). Vessels approaching or leaving wharves or slips.
- 103. Canal navigation.
- 104. Presumptions and burden of proof as to fault.
- 105. Evidence as to fault.
  - (1). In general.
  - (2). Steam vessels meeting.
  - (3). Steam vessels crossing.
  - (4). Steam vessels and sail vessels.
  - (5). Overtaking vessels.

**X. NARROW CHANNELS, HARBORS,  
RIVERS, AND CANALS.(Cont'd)**

- (6). Towing vessels and vessels in tow.
- (7). Vessels approaching or leaving wharves or slips.

**XI. SPECIAL CIRCUMSTANCES AND  
ERRORS IN EXTREMIS.**

- 106. Precautions required under special circumstances.
- 107. Departures from rules.
- 108. Errors in extremis.
- 109. Conduct after collision.
- 110. Injuries subsequent to collision.

**XII. SUITS FOR DAMAGES.****(A) RIGHT OF ACTION AND DEFENSES.**

- 111. Nature and form of remedy.
- 112. Grounds of action.
- 113. Defenses.
- 114. Persons entitled to sue.
- 115. Vessels, cargoes, and persons liable.

**(B) PARTIES.**

- 116. In general.

**(C) PLEADING.**

- 117. Libel or complaint at law.
- 118. Answer.
- 119. Cross-libel and answer thereto.
- 120. Amended and supplemental pleadings.
- 121. Issues, proof, and variance.

**(D) EVIDENCE.**

- 122. Presumptions.
- 123. Burden of proof.
- 124. Admissibility.
- 125. Weight and sufficiency.

**(E) DAMAGES.**

- 126. Nature and grounds in general, and what law governs.
- 127. Direct or remote damages.
- 128. Loss of profits or freight.
- 129. Expenses incurred.
- 130. Interest.
- 131. Exemplary damages.
- 132. Measure of damages in general.
- 133. Loss of vessel.



**82. COLLISION****XII. SUITS FOR DAMAGES.**(Cont'd)

- 134. Repairs of vessel.
- 135. Depreciation of vessel.
- 136. Detention of vessel.
- 137. Loss of or injury to cargo or personal effects.
- 138. Personal injuries.
- 139. Death of person injured.
- 140. Value of vessel in fault as limit of liability.
- 141. Structure or condition of vessel destroyed or injured.
- 142. Misconduct of person injured.
- 143. Division of damages.
- 143.1. — In general.
- 144. — Grounds in general.
- 145. — Damages to be divided.
- 146. — Mode of apportionment.
- 147. Contribution and subrogation.
- 148. Distribution of damages recovered.

**(F) TRIAL OR HEARING.**

- 149. Course and conduct of hearing.
- 150. Commissioners and proceedings before them.

**(G) JUDGMENT OR DECREE.**

- 151. In general.

**(H) APPEAL.**

- 153. In general.

**(I) COSTS.**

- 154. In general.

**83. COMMERCE****SUBJECTS INCLUDED**

Promotion and regulation of commerce in general

More particularly, the power to regulate commerce with foreign nations, among the several states, with Indian tribes, and the inter-

nal commerce of the states, and means and methods of exercise of the power

Interstate Commerce Commission

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Indians, regulations of intercourse with, see INDIANS

Particular instrumentalities of commerce, questions of regulation not involving the supremacy of federal power under the commerce clause of the federal Constitution, see CARRIERS, RAILROADS, INSURANCE, LABOR AND EMPLOYMENT, and other specific topics

Restraint of trade or commerce, contracts, combinations and conspiracies, see ANTI-TRUST AND TRADE REGULATION, CONTRACTS, CONSPIRACY

State power, conflict with federal power in general, see STATES

Trade regulation, more particularly that designed to prevent unfair competition and unfair trade practices, see ANTITRUST AND TRADE REGULATION

I. POWER TO REGULATE IN GENERAL, ¶1-14.

II. APPLICATION TO PARTICULAR SUBJECTS AND METHODS OF REGULATION, ¶14.5-82.60.

(A) IN GENERAL, ¶14.5-55.5.

(B) CONDUCT OF BUSINESS IN GENERAL, ¶56-62.9.

(C) MONOPOLIES AND TRADE REGULATION, ¶62.10-62.19.

(D) EMPLOYMENT OF LABOR, ¶62.20-62.69.

1. IN GENERAL, ¶62.20-62.21.

2. LABOR RELATIONS, ¶62.30-62.36.

3. WAGES AND HOURS, ¶62.40-62.67.

(E) LICENSES AND TAXES, ¶62.70-74.29.

(F) INTOXICATING LIQUORS, ¶74.30-74.49.

(G) CIVIL RIGHTS, ¶74.50-74.70.

(H) IMPORTS AND EXPORTS, ¶75-78.

(I) CIVIL REMEDIES, ¶80-81.5.

(J) OFFENSES AND PROSECUTIONS, ¶82-82.19.

**83. COMMERCE****II. APPLICATION TO PARTICULAR SUBJECTS AND METHODS OF REGULATION—Cont'd****(K) MISCELLANEOUS SUBJECTS AND REGULATIONS,**  
⌘82.20–82.60.**III. INTERSTATE COMMERCE COMMISSION,** ⌘83–214.**(A) ORGANIZATION AND AUTHORITY,** ⌘83–98.**(B) PROCEEDINGS BEFORE COMMISSION,** ⌘99–150.**(C) JUDICIAL REVIEW,** ⌘151–200.**(D) JUDICIAL ENFORCEMENT,**  
⌘201–214.**I. POWER TO REGULATE IN GENERAL.**

1. Nature and grounds of power.
2. Constitutional grant of power to Congress.
3. — In general.
4. — Commerce with foreign nations.
5. — Commerce among the states.
6. — Commerce with the Indian tribes.
7. — Internal commerce of states.
  - (1). In general.
  - (2). Activities affecting interstate commerce.
8. — Exclusive or concurrent powers of Congress and the states.
  - (1). In general; application of state or federal law.
  - (1.5). Federal pre-emption.
9. — Delegation of power by Congress.
10. — Nonexercise of power by Congress.
11. Powers remaining in states, and limitations thereon.
12. — In general.
13. — Internal commerce.
- 13.5. — Local matters affecting commerce.

**II. APPLICATION TO PARTICULAR SUBJECTS AND METHODS OF REGULATION.****(A) IN GENERAL.**

- 14.5. Subjects of commerce in general.
- 14.6. — In general.
- 14.10. — Transportation or movement of goods or persons.
  - (1). In general.
  - (2). Beginning, continuance, and termination of movement.
  - (3). Storage or warehousing.
15. — Property subject of commerce.

**II. APPLICATION TO PARTICULAR SUBJECTS AND METHODS OF REGULATION.(Cont'd)**

48. Nature and scope of regulations in general.
49. Inspection.
52. Quarantine and other sanitary or health regulations.
  - 52.1. — In general.
  - 52.5. — Drugs and narcotics.
  - 52.10. Environmental protection regulations.
54. Preferences and discriminations.
  - 54.1. — In general.
  - 54.5. — Foreign corporations.
55. Prohibitory acts and ordinances.
  - 55.5. Eminent domain.

**(B) CONDUCT OF BUSINESS IN GENERAL.**

56. Regulation and conduct in general; particular businesses.
58. Railroads and other surface carriers.
59. Telecommunications and internet.
60. Manufacture and sale of goods.
  - (1). In general.
  - (2). Food products.
61. Transportation of property and animals.
  - (1). In general.
  - (1.5). Where both termini in same state.
  - (2). Liabilities and penalties on transportation.
  - (3). Charges.
  - (4). Discrimination.
62. Transportation of passengers.
  - 62.1. Electricity.
  - 62.2. Gas.
  - 62.3. Insurance.
  - 62.4. Trade associations and exchanges; securities dealings.
  - 62.5. Agriculture.
  - 62.6. Stockyards and packing houses.
  - 62.7. Sports, entertainment, and recreation.

**(C) MONOPOLIES AND TRADE REGULATION.**

- 62.10. Monopolies and anti-trust laws in general.
  - (1). In general.
  - (2). Particular products or lines of commerce.
- 62.12. Trade regulation in general; trade-marks and unfair competition.

**83. COMMERCE****II. APPLICATION TO PARTICULAR SUBJECTS  
AND METHODS OF REGULATION.(Cont'd)**

62.13. Discrimination in price, services, or facilities.

62.14. Pleading and evidence.

**(D) EMPLOYMENT OF LABOR.****1. IN GENERAL.**

62.20. Employment generally.

62.21. Employers' liability.

**2. LABOR RELATIONS.**

62.30. In general.

62.31. Substantiality of impact and volume of business.

62.32. Particular businesses.

(1). In general.

(2). Construction business.

62.34. Labor contracts; right to work.

62.35. Union duties and liabilities.

62.36. Pleading and evidence.

**3. WAGES AND HOURS.**

62.40. In general.

62.41. Local business or employment; related businesses.

62.42. What constitutes commerce.

62.43. Engagement in commerce.

62.44. Production of goods for commerce.

(1). In general.

(2). Production.

62.46. Goods.

62.47. Occupation necessary to production of goods for commerce.

62.48. Volume of interstate business.

62.49. Particular business or activity.

62.50. Building operation or maintenance.

62.51. Building or construction work in general.

62.52. Construction and maintenance of instrumentalities of commerce.

62.53. Government contractors.

62.54. Manufacturing in general.

62.55. Mining and quarrying.

62.56. Oil production and distribution.

62.57. Transportation.

62.58. Warehousing and storing.

62.59. Wholesale and retail distributors.

**II. APPLICATION TO PARTICULAR SUBJECTS  
AND METHODS OF REGULATION.(Cont'd)**

62.60. Nature of employee's duties as controlling.

62.61. Work in part in interstate commerce.

62.62. Particular employees.

62.63. Building maintenance employees; watchmen and guards.

62.64. Clerical and office employees.

62.65. Mechanics and repairmen.

62.66. Trucking and delivery employees.

62.67. Pleading and evidence.

**(E) LICENSES AND TAXES.**

62.70. Taxation in general.

62.71. — In general.

62.75. — Discrimination.

62.80. — Multiple taxation; apportionment.

63. Licenses and privilege taxes.

63.5. — In general.

63.10. — Particular subjects and taxes.

63.15. — Motor vehicles and carriers.

64. — Mercantile business in general.

64.5. — Production and severance taxes.

65. — Brokers and factors.

66. — Commercial agents.

67. — Canvassers and solicitors.

68. — Hawkers and peddlers.

69. — Corporate franchises and privileges.

(1). In general.

(1.5). Registration, certification, or qualification.

(2). Carriers.

70. — Corporate receipts, earnings, or dividends.

71. Taxation of property.

71.1. — In general.

72. — Property employed in commerce, in general.

73. — Means and instrumentalities of commerce.

74. — Corporate capital and securities.

74.5. Sales and use taxes.

(1). In general.

(2). Particular subjects and transactions.

(3). Selective taxes.

74.15. Income taxes.

74.20. Gross receipts taxes.

**83. COMMERCE****(F) INTOXICATING LIQUORS.**

- 74.30. Subjects and regulations in general.
- 74.35. Powers reserved to states.
- 74.40. Licenses and taxes.

**(G) CIVIL RIGHTS.**

- 74.50. Subjects and regulations in general.
- 74.55. Public accommodations.
- 74.60. Carriers.
- 74.65. Employment.
- 74.70. Limitations on travel.

**(H) IMPORTS AND EXPORTS.**

- 75. Subjects and regulations in general.
- 76. Revenue measures in general.
- 77. State revenue measures.
- 77.5. — In general.
- 77.10. — Imports.
  - (1). In general.
  - (2). Continuation and termination of import status.
  - (3). Original package doctrine.
- 77.15. — Exports.
  - (1). In general.
  - (2). Commencement and continuation of export status.
- 78. — Tonnage.

**(I) CIVIL REMEDIES.**

- 80. Remedies and proceedings in general.
- 80.5. Arbitration.
- 80.10. Foreign corporations, suits by or against.
- 81. Execution of judicial process.
- 81.5. Injunction.

**(J) OFFENSES AND PROSECUTIONS.**

- 82. State offenses and prosecutions.
- 82.5. Federal offenses and prosecutions.
- 82.6. — In general.
- 82.10. — Offenses involving activity unlawful under state law.

**(K) MISCELLANEOUS SUBJECTS AND REGULATIONS.**

- 82.20. Subjects and regulations in general.
- 82.25. Contracts in general.
- 82.30. Navigation, shipping, and related matters.

**II. APPLICATION TO PARTICULAR SUBJECTS AND METHODS OF REGULATION.(Cont'd)**

- 82.35. Public highways, navigable waters, and state lands.
- 82.40. Fishing.
- 82.45. Aviation.
- 82.50. Weapons and explosives.
- 82.55. Obscenity.
- 82.60. Criminal or racketeer influenced and corrupt organizations.

*Includes only effect on interstate commerce. Other matters formerly classified to ~~82.70-82.74~~ are now classified to the topic RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS.*

**III. INTERSTATE COMMERCE COMMISSION.****(A) ORGANIZATION AND AUTHORITY.**

- 83. Creation and organization.
- 83.5. Constitutional and statutory provisions.
- 84. Compensation and expenses.
- 85. Authority and functions in general.
  - (1). In general.
  - (2). Rules and regulations.
  - (4). Telegraphs and telephones.
- 85.1. Regulation of carriers in general; railroads and pipe lines.
- 85.2. — In general.
- 85.3. — Preferences and discriminations.
- 85.4. — Routes and connections.
- 85.5. — Car service.
- 85.6. — Certificates and extension or abandonment of lines.
- 85.7. — Combinations and consolidations of carriers; agreements.
- 85.8. — Facilities and equipment.
- 85.9. — Accounts, funds, and securities of carriers.
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COMMISSION.(Cont'd)**

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**83. COMMERCE****III. INTERSTATE COMMERCE  
COMMISSION.**(Cont'd)

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**83E. COMMERCIAL PAPER****SUBJECTS INCLUDED**

- Instruments in writing whereby the maker requests, orders, or promises payment of a certain sum of money absolutely, whether negotiable or not
- Nature, requisites, validity, incidents, construction, operation, and effect of such instruments
- Acceptance of such requests or orders
- Endorsement and other modes of transfer of such instruments, and rights of transferees
- Demand of acceptance or payment, protest for non-acceptance or nonpayment, and notice thereof
- Payment or renewal
- Actions on such instruments

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

- Alterations, effect of, see ALTERATION OF INSTRUMENTS
- Bank checks, rights and liabilities of bankers and depositors, see FINANCE, BANKING, AND CREDIT IV(J)
- Contracts generally; promises to pay in services, goods, or the like, or upon condition, see CONTRACTS
- Guaranty or suretyship for payment of bills and notes, see GUARANTY, PRINCIPAL AND SURETY
- Illegality, particular grounds of, see SUNDAY, USURY, GAMING, and other specific topics

Lost bills or notes, establishing and recovering on, see LOST INSTRUMENTS

Other contracts or transactions, bills and notes incidental thereto, see INSURANCE, SALES, REAL PROPERTY CONVEYANCES, and other specific topics

Particular classes of persons, bills and notes by, see INFANTS, MENTAL HEALTH, and other specific topics

Particular entities and organizations, bills and notes by, see ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP, and other specific topics

Persons in fiduciary or representative relations, bills and notes by, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, PRINCIPAL AND AGENT, TRUSTS, and other specific topics

Political or municipal bodies, bills and notes by, see COUNTIES, MUNICIPAL CORPORATIONS, UNITED STATES, and other specific topics

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- 173. Ratification or recognition of validity.
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- 197. — Refusal of drawee to accept or pay; dishonor.
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- 204. Promisees, obligees, and payees.
- 205. Joint or several parties.
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- 207. — Promisors, obligors, and payors in general.
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- 214. — Accommodation makers.
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- 306. — Sales contracts.
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- 309. Trade acceptances.
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- 312. Letters of credit.
- 313. Instruments given as or secured by collateral.
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- 317. Instruments evidencing gambling debts; markers.
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- 494. Recourse by assignee or purchaser to assignor or seller.
- 495. — In general.
- 496. — Necessity of proceeding against maker.
- 497. Express and implied warranties.
- 498. Reassignment or resale.

**(D) UNAUTHORIZED TRANSFER.**

- 501. In general.
- 502. Impostors in general.
- 503. Fraud, forgery, or alteration.
- 504. Diversion to unauthorized purpose.

**(E) AGREEMENT OR PROMISE TO TRANSFER.**

- 511. In general.
- 512. Agreement or promise to indorse.
- 513. Agreement or promise to assign or sell.

**VIII. HOLDERS IN DUE COURSE.****(A) IN GENERAL.**

- 521. In general.
- 522. Persons in possession; holders in general.
- 523. Bona fide holders or purchasers in general.
- 524. Nature of instrument transferred.
- 525. Mode, form, or purpose of transfer.
- 526. Due course of business.
- 527. Consideration.
- 528. — In general.
- 529. — Payment of value.
- 530. — Payment of less than face value.
- 531. — Usurious consideration.
- 532. — Crediting proceeds.
- 533. Good faith.
- 534. Knowledge or notice.
- 535. — In general.
- 536. — Actual knowledge or notice in general.
- 537. — Constructive knowledge or notice in general.
- 538. — Duty to make inquiry in general.
- 539. — Knowledge or notice implied from relation between parties.
- 540. — Character or capacity of persons dealing with instrument.

**83E. COMMERCIAL PAPER****VIII. HOLDERS IN DUE COURSE.(Cont'd)**

- 541. — Relation to instrument of persons dealing therewith.
- 542. — Matters apparent from instrument.
- 543. — Knowledge as to consideration, other agreements, or collateral security.
- 544. — Knowledge of default.
- 545. — Knowledge as to defenses.
- 546. — Circumstances attending transfer.
- 547. — Time of notice.
- 548. — Operation and effect.
- 549. Taking after maturity.
- 550. — In general.
- 551. — Time of taking.
- 552. — Effect as notice or as putting on inquiry.
- 553. — Title and rights acquired.
- 554. — Defenses as against purchasers after maturity.
- 555. Taking as collateral security.
- 556. — In general.
- 557. — Taking as collateral security for pre-existing debt.
- 558. Taking in payment of pre-existing debt.
- 559. Renewal of instrument.
- 560. Subsequent transferees.
- 561. Payee as holder in due course.

**(B) TITLE AND RIGHTS ACQUIRED BY HOLDERS IN DUE COURSE.**

- 571. In general.
- 572. Claims and defenses assertable against holders in due course.
- 573. — In general.
- 574. — Personal or real claims and defenses in general.
- 575. — Incapacity or want of authority of parties.
  - (1). In general.
  - (2). Powers of corporations or corporate officers.
- 576. — Defective execution.
- 577. — Conditions or collateral agreements.
- 578. — Want or failure of consideration in general.
- 579. — Accommodation paper.
- 580. — Mistake.
- 581. — Fraud in inception.

**VIII. HOLDERS IN DUE COURSE.(Cont'd)**

- 582. — Duress.
- 583. — Illegality in general.
- 584. — Usury.
- 585. — Forgery.
- 586. — Alteration.
- 587. — Accommodation indorsement.
- 588. — Fraudulent diversion.
- 589. — Fraudulent or forged indorsement.
- 590. — Lost, stolen, or destroyed instruments.
- 591. — Payment or discharge.
- 592. — Set-off or counterclaim.
- 593. Estoppel or waiver of right to assert defense.

**IX. PRESENTMENT, DEMAND, NOTICE, AND PROTEST.**

- 601. In general.
- 602. Necessity.
- 603. — In general.
- 604. — Presentment or demand for payment in general.
- 605. — Notice of nonpayment or dishonor in general.
- 606. — Nature of instrument or obligation.
- 607. — Condition precedent to liability of indorser.
- 608. — Excuses for failure to make or give.
- 609. — Effect of failure to make or give.
- 610. Sufficiency.
- 611. — In general.
- 612. — Presentment or demand for payment in general.
- 613. — Notice of nonpayment or dishonor in general.
- 614. — Diligence in general.
- 615. — Persons making or giving.
- 616. — Persons receiving.
- 617. — Place.
- 618. — Time.
  - (1). In general.
  - (2). Drafts and checks.
  - (3). Bills of exchange.
  - (4). Notes.
- 619. — Form, requisites, and mode.
  - (1). In general.
  - (2). Mail.

**83E. COMMERCIAL PAPER****IX. PRESENTMENT, DEMAND, NOTICE,  
AND PROTEST.(Cont'd)**

- 620. — Excuses for delay.
- 621. — Effect of delay.
- 622. Protest and certificate thereof.
- 623. — In general.
- 624. — Requisites and sufficiency.
- 625. — Certificate as evidence.
- 626. — Wrongful protest.
- 627. Presentment for acceptance.
- 628. Notice of nonacceptance.
- 629. Waiver and estoppel.
- 630. New promise or waiver after discharge.

**X. PAYMENT, SATISFACTION,  
AND DISCHARGE.****(A) IN GENERAL.**

- 641. In general.
- 642. Satisfaction otherwise than by payment.

**(B) PAYMENT.**

- 651. In general.
- 652. Necessity.
- 653. — In general.
- 654. — Nonpayment or default as breach.
- 655. — Cure and reinstatement.
- 656. Persons by whom payment may be made.
- 657. Persons to whom payment may be made.
- 658. — In general.
- 659. — To actual holder in general.
- 660. — To another than actual holder in general.
- 661. — Notice of transfer.
- 662. — Payment without notice of assignment.
- 663. — Payee as agent of holder.
- 664. Amount.
- 665. — In general.
- 666. — Interest.
- 667. — Fees and charges.
- 668. — Attorney fees and costs.
- 669. Time for payment; maturity.
- 670. — In general.
- 671. — Instruments payable “on or before” certain date.
- 672. — Instruments payable on demand.
- 673. — Instruments payable in installments.

**X. PAYMENT, SATISFACTION,  
AND DISCHARGE.(Cont'd)**

- 674. — Acceleration.
  - (1). In general.
  - (2). Acceleration for nonpayment.
  - (3). Acceleration for insecurity.
  - (4). Notice of acceleration.
  - (5). Revocation of acceleration.
- 675. — Grace periods.
- 676. Place for payment.
- 677. Medium, mode, and sufficiency of payment.
- 678. — In general.
- 679. — New bills or notes.
- 680. — Drafts, checks, and certificates of deposit.
- 681. — Property or services.
- 682. Application of payments.
- 683. — In general.
- 684. — Principal or interest.
- 685. Prepayment.
- 686. — In general.
- 687. — Charges, premiums, and penalties.
- 688. Indorsement of payments.
- 689. Recovery of payments.

**(C) DISCHARGE.**

- 691. In general.
- 692. Discharge by payment in general.
- 693. Discharge of particular parties.
- 694. — In general.
- 695. — Maker.
- 696. — Acceptor.
- 697. — Indorser.
- 698. — Discharge of accommodation parties.
  - (1). In general.
  - (2). Accommodation maker.
  - (3). Accommodation acceptor.
  - (4). Accommodation indorser.
- 699. Discharge by impairment of collateral.
- 700. Discharge by extension or renewal.
- 701. Cancellation or surrender of instrument.
- 702. Payment or satisfaction by other parties.

**(D) RIGHTS OF PARTIES ON PAYMENT  
OR DISCHARGE.**

- 711. In general.
- 712. Accommodation parties.
- 713. Contribution.

**83E. COMMERCIAL PAPER****XI. ENFORCEMENT, REMEDIES,  
AND PROCEEDINGS.****(A) IN GENERAL.**

- 721. In general.
- 722. Elements in general.
- 723. Nature and form of remedy.
- 724. — In general.
- 725. — Exclusive, concurrent, and conflict-  
ing remedies.
- 726. Persons entitled to enforce instrument  
or seek remedy; standing.
- 727. — In general.
- 728. — Owners, holders, and persons in  
possession in general.
- 729. — Payees.
- 730. — Nonholders in possession.
- 731. — Indorsed instruments.
  - (1). In general.
  - (2). Indorsement in full or in blank.
  - (3). Special indorsement.
  - (4). Indorsement for collection.
- 732. — Assigned or sold instruments.
- 733. Lost, stolen, or destroyed instruments.
- 734. Defenses.
- 735. — In general.
- 736. — Particular grounds.
  - (1). In general.
  - (2). Want or failure of consideration.
  - (3). Invalidity of obligation.
  - (4). Failure to perform.
  - (5). Impossibility or frustration of per-  
formance.
  - (6). Other agreements.
  - (7). Want of title or interest.
  - (8). Payment, satisfaction, or dis-  
charge.
  - (9). Waiver or estoppel.
  - (10). Fraud.
- 737. — Persons as to or against whom de-  
fenses are available.
- 738. — Waiver or loss of defense.
- 739. Conditions precedent.
- 740. Time of accrual.
- 741. Time for proceedings; limitations and  
laches.
- 742. Jurisdiction and venue.
- 743. Course and conduct of proceedings in  
general.

**(B) PARTIES.**

- 751. In general.
- 752. Real parties in interest.
- 753. Necessary and indispensable parties.
- 755. Bringing in new parties; joinder; substi-  
tution.

**(C) PLEADING.**

- 761. In general.
- 762. Declaration, complaint, or petition.
- 763. — In general.
- 764. — Acceptance.
- 765. — Inability to recover from maker.
- 766. — Execution and delivery of instru-  
ment.
- 767. — Description of instrument.
- 768. — Consideration.
- 769. — Nature and extent of liability.
- 770. — Transfer and ownership of instru-  
ment in general.
  - (1). In general.
  - (2). Indorsement.
  - (3). Assignment or sale.
- 771. — Good faith and payment of value;  
holder in due course.
- 772. — Maturity and performance of con-  
ditions.
- 773. — Presentment, demand, notice, and  
protest.
- 774. — Nonpayment.
- 775. — Amount due, interest, and attorney  
fees.
- 776. Plea, answer, or affidavit of defense.
- 777. — In general.
- 778. — Traverses or denials and admis-  
sions in general.
- 779. — Execution, delivery, and identity of  
instrument.
- 780. — Want or failure of consideration.
- 781. — Mistake, fraud, or duress.
- 782. — Illegality.
- 783. — Fraudulent diversion.
- 784. — Transfer and ownership of instru-  
ment in general.
  - (1). In general.
  - (2). Indorsement.
  - (3). Assignment or sale.
- 785. — Good faith and payment of value;  
holder in due course.



**83E. COMMERCIAL PAPER****XI. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)**

- 786. — Presentment, demand, notice, and protest.
- 787. — Extension of time and agreement not to sue.
- 788. — Payment, satisfaction, and discharge.
- 789. — Verification.
- 790. Replication or reply and subsequent pleadings.
- 791. Amended and supplemental pleadings.
- 792. Setting out, annexing, filing, or production of instrument.
- 793. Variance between pleadings and proof.

**(D) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF.**

- 801. In general.
- 802. Execution, delivery, and identity of instrument.
- 803. Consideration.
- 804. — In general.
- 805. — Burden of proof in general.
- 806. — Want or failure of consideration.
- 807. — Rebutting presumptions.
- 808. Validity.
- 809. Nature and extent of liability.
- 810. — In general.
- 811. — Accommodation obligations.
- 812. Transfer and ownership of instrument in general.
- 813. — In general.
- 814. — Possession.
- 815. — Indorsement.
- 816. Good faith and payment of value; holder in due course.
- 817. — In general.
- 818. — Burden of proof in general.
- 819. — Consideration for indorsement or transfer.
- 820. — Legality of instrument or consideration.
- 821. — Fraud in inception or transfer.
- 822. Presentment, demand, notice, and protest.
- 823. Payment, satisfaction, and discharge.

**(E) ADMISSIBILITY OF EVIDENCE.**

- 831. In general.

**XI. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)**

- 832. Execution, delivery, and identity of instrument.
- 833. Consideration.
- 834. Mistake, fraud, or duress.
- 835. Legality of object and of consideration.
- 836. Fraudulent diversion.
- 837. Nature and extent of liability.
- 838. Transfer and ownership of instrument in general.
- 839. — In general.
- 840. — Possession.
- 841. — Indorsement.
- 842. Good faith and payment of value; holder in due course.
- 843. Presentment, demand, notice, and protest.
- 844. Payment, satisfaction, and discharge.
- 845. Competency of parties or intermediate holders as witnesses.

**(F) WEIGHT AND SUFFICIENCY OF EVIDENCE.**

- 851. In general.
- 852. Prima facie case in general.
- 853. Execution, delivery, and identity of instrument.
- 854. Consideration.
- 855. — In general.
- 856. — Accommodation obligations.
- 857. Mistake, fraud, or duress.
- 858. Legality of object and of consideration.
- 859. Fraudulent diversion.
- 860. Nature and extent of liability.
- 861. Transfer and ownership of instrument in general.
- 862. — In general.
- 863. — Possession.
- 864. — Indorsement.
- 865. Good faith and payment of value; holder in due course.
- 866. Presentment, demand, notice, and protest.
- 867. Payment, satisfaction, and discharge.
- 868. — In general.
- 869. — Medium or mode of payment.

**(G) TRIAL, HEARING, AND DETERMINATION.**

- 871. In general.
- 872. Questions of law or fact.

**83H. COMMODITY FUTURES TRADING REGULATION****XI. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)**

- 873. — In general.
- 874. — Execution, delivery, and identity of instrument.
- 875. — Consideration.
- 876. — Validity.
- 877. — Transfer and ownership of instrument in general.
- 878. — Good faith and payment of value; holder in due course.
- 879. — Presentment, demand, notice, and protest.
- 880. — Payment, satisfaction, and discharge.
- 881. Instructions.
- 882. — In general.
- 883. — Execution, delivery, and identity of instrument.
- 884. — Consideration.
- 885. — Validity.
- 886. — Transfer and ownership of instrument in general.
- 887. — Good faith and payment of value; holder in due course.
- 888. — Presentment, demand, notice, and protest.
- 889. — Payment, satisfaction, and discharge.
- 890. Verdict and findings.
- 891. Judgment, order, or decree.

**(H) RELIEF.**

- 901. In general.
- 902. Measure and amount of recovery.
- 903. — In general.
- 904. — Interest.
- 905. — Exchange.
- 906. — Fees and charges.
- 907. Damages for dishonor or nonpayment.
- 908. — In general.
- 909. — Statutory damages in general.
- 910. — Double or treble damages.
- 911. — Punitive or exemplary damages.
- 912. Proceedings for assessment.

**(I) COSTS AND FEES.**

- 921. In general.
- 922. Attorney fees.
- 923. — In general.

**XI. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)**

- 924. — Items and services compensable.
- 925. — Amount.
- 926. Proceedings to impose; taxation.

**83H. COMMODITY FUTURES TRADING REGULATION****SUBJECTS INCLUDED**

Regulation of commodity futures trading, persons and institutions involved in such trading and persons giving advice with respect to such trading

Administrative agencies which regulate the trading of commodity futures and officers, powers and proceedings of such agencies

Violations of regulations, their effect, and remedies therefor

Criminal offenses and prosecutions relating to violations of regulations

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Organization and operation of exchanges generally, see EXCHANGES

Brokers' rights and obligations generally and as members of exchanges, see BROKERS and EXCHANGES

Application of securities, antitrust and tax laws, see SECURITIES REGULATION, ANTITRUST AND TRADE REGULATION, INTERNAL REVENUE and TAXATION

Arbitration of disputes, see ALTERNATIVE DISPUTE RESOLUTION

Regulations pertaining to commodities generally, see AGRICULTURE

I. REGULATION IN GENERAL, ¶1–50.

II. ADMINISTRATIVE AGENCIES, PROCEEDINGS, AND ORDERS, ¶51–70.

III. CIVIL REMEDIES IN GENERAL, ¶71–90.

**83H. COMMODITY FUTURES TRADING REGULATION****IV. INJUNCTION AND RECEIVERSHIP,**  
⌘91–100.**V. OFFENSES AND PROSECUTIONS,**  
⌘101–102.**I. REGULATION IN GENERAL.**

1. In general.
2. Constitutional and statutory provisions.
3. Rules and regulations of exchanges.
4. License or registration.
- 4.1. — In general.
5. — Eligibility; financial requirements.
6. Subjects of regulation.
- 6.1. — In general.
7. — Commodities.
8. — Contract markets, commission merchants and brokers.
9. — Advisors and commodity pool operators.
10. — Options; deferred delivery or futures contracts.
11. Trading.
12. — In general.
13. — Items traded; prohibitions.
14. — Price or quantity limits.
15. — Execution of trades.
16. — Margin or credit transactions.
17. — Fraud or manipulation.
18. — Wash, cross or accommodation trading; fictitious sales or reports.
19. — Disclosure.
20. — Unauthorized or unsuitable trading; churning.
21. — Emergency powers.
  - (1). In general.
  - (2). Suspension of trading; liquidation.
  - (3). Declaration of emergency.
22. Reporting and notice requirements.
23. Effect of violation of regulations.
- 23.1. — In general.
24. — Avoidance of contracts.
25. — Liability of exchanges and officers thereof.
  - (1). In general.
  - (2). Failure to regulate.
26. — Liability of brokers or commission merchants.
27. — Vicarious liability of employers and others.

**I. REGULATION IN GENERAL.(Cont'd)**

28. — Proximate cause.
29. — Persons entitled to protection.
30. Evidence.
31. Questions for jury; fact questions.

**II. ADMINISTRATIVE AGENCIES,  
PROCEEDINGS, AND  
ORDERS.**

51. In general.
52. Primary or exclusive jurisdiction; exhaustion of remedies.
53. Rules and regulations.
54. Enforcement in general; sanctions.
55. Suspension of trading privileges.
56. Proceedings in general; notice.
57. Investigations.
58. Compelling testimony or production of evidence; subpoenas.
59. Evidence.
60. Judicial review.
61. Reparations.

**III. CIVIL REMEDIES IN GENERAL.**

71. In general.
72. Right or cause of action.
73. Venue.
74. Time to sue.
75. Parties and process.
76. Pleading.
77. Evidence.
78. Trial.
79. Relief; disgorgement.

**IV. INJUNCTION AND RECEIVERSHIP.**

91. Injunction in general.
92. Proceedings.
93. Evidence.
94. Preliminary injunction; freeze orders.
- 94.1. — In general.
95. — Affidavits and other evidence.
96. Receivership.

**V. OFFENSES AND PROSECUTIONS.**

101. Offenses.
102. Prosecutions.

**83T. COMMON INTEREST COMMUNITIES****83T. COMMON INTEREST COMMUNITIES****SUBJECTS INCLUDED**

Condominiums, cooperative apartments, planned communities, and other residential arrangements featuring a similar mixture of individual and common ownership

In particular, estates in realty in which individually owned lots or units in a community development are burdened by a covenant either to pay for the use and maintenance of property held in common by the individual owners or to pay assessments to an association that provides services to the development or that enforces the covenant

Creation and termination of such communities

Conversion of an existing building to common interest ownership and protection of tenants in such a building

Use, alteration, management, and maintenance of the common property and the individual units

Unit owners' associations

Unit purchases and other transfers

Time share plans

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Associations generally, see ASSOCIATIONS

Covenants generally, see COVENANTS

Easements generally, see EASEMENTS

Ground leases generally, see PROPERTY III(C)5

Housing discrimination, see CIVIL RIGHTS ¶1077.5

Land sales practices laws of general application, such as the Interstate Land Sales Full Disclosure Act, see ANTITRUST AND TRADE REGULATION III

Leases and agreements for the occupation of real property in general, see LANDLORD AND TENANT

Mobile homes and mobile home parks not organized as cooperatives, see LANDLORD AND TENANT XII

Public or low-income housing, see LANDLORD AND TENANT X and UNITED STATES I(H)

Riparian and littoral rights in "dockominiums" and similar common interests, see WATER LAW ¶1250(3)

Rule against perpetuities and restraints against alienation, see PERPETUITIES

Sales of real property generally, see REAL PROPERTY CONVEYANCES

Securities laws, see SECURITIES REGULATION

Unfair trade practices and consumer protection laws of general application, see ANTITRUST AND TRADE REGULATION III

Zoning, see ZONING AND PLANNING

I. IN GENERAL, ¶1–19.

II. CREATION, MODIFICATION, AND TERMINATION, ¶20–39.

III. COMMON ELEMENTS, ¶40–59.

IV. UNIT OWNERS' ASSOCIATION, ¶60–89.

V. UNIT OWNERSHIP AND EXCLUSIVE RIGHT OF POSSESSION, ¶90–109.

VI. UNIT PURCHASES AND OTHER VOLUNTARY TRANSFERS, ¶110–139.

VII. ACTIONS AND PROCEEDINGS, ¶140–169.

VIII. GOVERNMENT REGULATION, ¶170–173.

**I. IN GENERAL.**

1. In general.
2. Nature of common ownership in general.
3. Nature and status of condominium ownership.
4. — In general.
5. — Allocated interests in general.
6. — Leasehold condominium in general.
7. Nature and status of cooperative ownership.
8. — In general.
9. — Allocated interests in general.
10. — Holders of unsold shares in general.
11. Nature of time share interest.
12. — In general.
13. — Time share estate in general.
14. — Time share license in general.
15. Nature of ownership in other planned communities.

**83T. COMMON INTEREST COMMUNITIES****II. CREATION, MODIFICATION,  
AND TERMINATION.**

- 20. In general.
- 21. Declarant, developer, or sponsor in general.
- 22. Declaration or other similar instrument.
- 23. — In general.
- 24. — Validity of covenants in general.
- 25. — Plats and plans.
- 26. — Amendment.
- 27. — Recording and notice.
- 28. — Construction, operation and effect; enforcement of covenants in general.
- 29. Property and appurtenances included; nature of interest in property estate.
- 30. Conversion of existing building.
- 31. — In general.
- 32. — Protection of building's non-purchasing tenants.  
*Injunctive relief, see INJUNCTION.*
- 33. Special rights reserved to declarant or developer and successors.
- 34. Conversion of one form of common interest ownership to another.
- 35. Consolidation, merger, and termination.

**III. COMMON ELEMENTS.**

- 40. In general.
- 41. Nature and ownership of common elements.
- 42. — In general.
- 43. — Condominiums and cooperatives.
- 44. — Other planned communities.
- 45. — Limited common element.
- 46. Use.
- 47. Alteration, expansion, or improvement.
- 48. Conveyance or encumbrance.
- 49. Division or partition.
- 50. Management and maintenance.
- 51. — In general.
- 52. — Pre-turnover duties of declarant, developer, or sponsor.
- 53. — Responsibility of unit owners for condition of common areas.
- 54. — Responsibility of unit owners' association for condition of common areas.
- 55. — Contracts for management and maintenance.
  - (1). In general.

**III. COMMON ELEMENTS.(Cont'd)**

- (2). Requisites; validity; unconscionability; terminability.
- (3). Performance or breach.
- (4). Responsibility of management/maintenance contractor for condition of common areas.

**IV. UNIT OWNERS' ASSOCIATION.**

- 60. In general.
- 61. Nature of entity; purpose in general.
- 62. Necessity.
- 63. Creation, organization, reorganization, and dissolution; membership.
- 64. Governing board; members, directors, and officers; committees.
- 65. Member meetings.
- 66. Powers, duties, and functions.
- 67. — In general.
- 68. — Constitution, by-laws, and rules.
  - (1). In general.
  - (2). Validity in general.
  - (3). Adoption; amendment; repeal.
  - (4). Construction, operation, and effect.
- 69. — Contracts in general.
- 70. — Relationship with unit owners in general.
- 71. — Other particular powers, duties, and functions.
- 72. Dues, assessments, fines, and other fees.
- 73. — In general.
- 74. — Power and duty to assess or levy; validity.
- 75. — Collection, payment, and abatement.
- 76. — Lien.
  - (1). In general.
  - (2). Perfection and priority.
- 77. — Lien foreclosure; other remedies and proceedings for nonpayment.
- 78. — Funds and distributions.
- 79. Association records.
- 80. Relationship with declarant or developer in general.
- 81. Control of association or its governing board.
- 82. Contracts with declarant, developer, or affiliates.
- 83. — In general.

**83T. COMMON INTEREST COMMUNITIES****IV. UNIT OWNERS' ASSOCIATION.**(Cont'd)

84. — Validity; unconscionability; termination rights.

**V. UNIT OWNERSHIP AND EXCLUSIVE RIGHT OF POSSESSION.**

90. In general.
91. Documents recognizing unit ownership or right of possession; proprietary leases.
92. Unit boundaries.
93. Use and control of unit.
94. — In general.
95. — Rules and restrictions, construction and enforcement of.
96. — Construction and alteration of units.
- (1). In general.
- (2). Restrictions on unit owners.
- (3). Approval.
97. — Maintenance, repair, and replacement; responsibility for condition.
98. Involuntary termination of ownership or possession; eviction.  
*Injunctive relief, see INJUNCTION.*
99. Time share units and plans.

**VI. UNIT PURCHASES AND OTHER VOLUNTARY TRANSFERS.**

110. In general.
111. Nature of interest transferred.
112. Developer or sponsor, sales or transfers by.
113. — In general.
114. — Right of tenant or occupant to purchase at time of conversion of existing building.  
*Injunctive relief, see INJUNCTION.*
115. Association or cooperative corporation, sales or transfers by in general.
116. Unit owners, sales or transfers by in general.
117. Restrictions or conditions on transfer of unit.
118. — In general.
119. — Consent, approval, or right of first refusal.
120. — Transfer fee or other monetary condition.
121. — Exemptions.
122. — Waiver.

**VI. UNIT PURCHASES AND OTHER VOLUNTARY TRANSFERS.**(Cont'd)

123. Disclosures, public offering statement, promotional materials and other requirements.
124. — In general.
125. — Units subject to disclosure requirements; persons or entities entitled.
126. — Persons or entities that must comply.
127. — Public offering statement; advertising and promotion.
128. — Other particular requisite disclosures; resale certificate.
129. Purchase contract, assignment of proprietary lease, and other transfers.
130. — In general.
131. — Requisites and validity in general.
132. — Validity of assent; fraud or misrepresentation.
133. — Construction and operation.
134. — Modification; rescission or termination.
135. — Performance or breach.
136. — Warranties.
137. Transferee's rights and liabilities independent of transfer contract.

**VII. ACTIONS AND PROCEEDINGS.**

140. In general.
141. Nature and form of remedy.
142. Right of action; persons or entities entitled to sue; standing.
143. — In general.
144. — Association and members of its board.
145. — Derivative actions.
146. Conditions precedent.
147. Persons or entities liable.
148. — In general.
149. — Sponsor, developer, declarant and successors.
150. — Association and members of its board.  
*Assertion of business judgment rule as a defense to an action against association or its officers, see ¶64.*
151. — Property manager under contract.
152. — Unit owner.
153. Jurisdiction; venue.
154. Process.

**83T. COMMON INTEREST COMMUNITIES****VII. ACTIONS AND PROCEEDINGS.**(Cont'd)

- 155. Limitations and laches.
- 156. Parties.
- 157. Pleading.
- 158. Evidence.
- 159. Trial or hearing; determination.
- 160. Damages and other relief.
- 161. Costs and attorney fees.

**VIII. GOVERNMENT REGULATION.**

- 170. In general.
- 171. Rule-making and oversight authority.
- 172. Proceedings, hearings, determinations, and orders.
- 173. Judicial review.

**84. COMMON LANDS****SUBJECTS INCLUDED**

Lands held by numerous proprietors or by bodies corporate or politic for the general use of themselves or the public

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Joint estates in land, see PROPERTY IV  
Rights of common in lands of others, see EASEMENTS

- 1. Nature, creation, and existence of commons.
- 2. Statutory provisions.
- 3. Lands constituting common.
- 4. Proprietors.
- 5. — In general.
- 6. — Incorporation.
- 7. — Meetings and proceedings.
- 8. — Records.
- 9. — Taxes.
- 10. Title to lands.
- 11. Control, management, and use.
- 12. Misuser.
- 13. Abandonment.
- 14. Allotment or partition.
- 15. Sales and conveyances.

- 16. Actions relating to lands or proceeds thereof.

**85. COMMON LAW****SUBJECTS INCLUDED**

The body of customary and statutory law recognized and adopted in the several states as the basis of their jurisprudence, not created by express enactment by the legislatures of such states

Presumptions as to its existence and proof of its rules

Its sources, principles and maxims, and its application in general

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Jurisdiction of courts, remedies and procedure, distinction between the common-law and other systems of jurisprudence, see ACTION, PLEADING, EQUITY, ADMIRALTY and other specific topics

Particular questions of law, statement and application of governing common-law rules, see specific topics

Statutes modifying the common-law, see STATUTES and specific topics

- 1. Nature and authority in general.
- 2. Sources and scope.
- 2.1. — In general.
- 3. — Customary law in general.
- 4. — Christianity.
- 5. — Ecclesiastical law.
- 6. — Law merchant.
- 7. — English statutes.
- 8. — Decisions of English courts.
- 9. Principles and maxims.
- 10. Adoption and repeal.
- 11. — In general.
- 12. — Constitutions and statutes of particular states.  
*Statutory alteration or abrogation of common law, see STATUTES* *¶*1206.
- 13. — Constitution and laws of United States.

**89. COMPROMISE, SETTLEMENT, AND RELEASE**

14. Application and operation.
15. Pleading.
16. Presumptions.
17. Evidence.

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**89. COMPROMISE, SETTLEMENT,  
AND RELEASE**
**SUBJECTS INCLUDED**

Adjustment of matters in dispute, before or pending suit, by mutual concessions and agreement, or of mutual accounts or debts by agreement as to the balance, and discharge from liability thereon

Relinquishment of a right or claim to the person against whom it is to be exercised or enforced, express or implied, by agreement or act of the parties

Nature, requisites, validity, incidents, operation, and effect of such agreements and acts

Rights, liabilities, and remedies of the parties

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Accord and satisfaction, see **ACCORD AND SATISFACTION**

Accounts, statements of, liabilities implied by law, see **ACCOUNT STATED**

Agreements between husband and wife, see **MARRIAGE AND COHABITATION**

Assignment of structured settlement, see **ASSIGNMENTS**

Bankrupt or insolvent laws, discharge of obligations by operation of, see **BANKRUPTCY, CREDITORS' REMEDIES** ¶1183

Compelling cancellation or surrender of release, see **CANCELLATION OF INSTRUMENTS**

Compositions with creditors, see **CREDITORS' REMEDIES** ¶1182

Consent decrees, or judgments by confession or consent, see **FEDERAL CIVIL PROCEDURE** ¶2397 to 2397.6 and **JUDGMENT** ¶71 to 73

Dram Shop Act releases, see **ALCOHOLIC BEVERAGES** ¶1134

Exculpatory clauses and pre-activity or pre-injury releases in general, see **CONTRACTS**

Fair Labor Standards Act or Federal Employers Liability Act releases, see **LABOR AND EMPLOYMENT**

Insurance disputes, see **INSURANCE** XXVII

Landlord and tenant as to rent, see **LANDLORD AND TENANT**

Particular classes of persons, release by, see **INFANTS, MENTAL HEALTH**, and other specific topics

Particular kinds of liability, release from, see **COMMERCIAL PAPER, PRINCIPAL AND SURETY, GUARANTY**, and other specific topics

Particular rights and interests in real property, release of, see **MORTGAGES AND DEEDS OF TRUST, MECHANICS' LIENS**, and other specific topics

Patent infringement claims, see **PATENTS** ¶1453

Payment, discharge of obligations by operation of, see **PAYMENT** and other specific topics

Persons in representative or fiduciary relations, see **ATTORNEYS AND LEGAL SERVICES, EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD**, and other specific topics

Pre-injury waiver by spectators and participants in athletic events, amusements, theaters, shows, see **PUBLIC AMUSEMENT AND ENTERTAINMENT** ¶129

Stipulations between parties to proceedings, see **STIPULATIONS**

Wage claims by seamen, release of, see **SEAMEN** ¶25

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I. IN GENERAL, ¶201–210.

II. NATURE AND REQUISITES, ¶211–370.

(A) IN GENERAL, ¶211–270.

(B) OFFER AND ACCEPTANCE, ¶271–280.

(C) CONSIDERATION, ¶281–310.

(D) EXPRESSION OF AGREEMENT; EXECUTION, ¶311–320.

(E) PARTICULAR GROUNDS OF INVALIDITY OR UNENFORCEABILITY, ¶321–360.

(F) EFFECT OF INVALIDITY, ¶361–370.

III. CONSTRUCTION, OPERATION, AND EFFECT, ¶371–490.



**89. COMPROMISE, SETTLEMENT, AND RELEASE****III. CONSTRUCTION, OPERATION, AND EFFECT—Cont'd**

- (A) IN GENERAL, ¶371–410.
  - (B) MATTERS INCLUDED OR AFFECTED, ¶411–440.
  - (C) PERSONS AFFECTED, ¶441–460.
  - (D) MULTIPLE CLAIMANTS, PLAINTIFFS, OR DEFENDANTS, ¶461–480.
  - (E) DERIVATIVE ACTIONS, CLAIMS, AND SETTLEMENTS, ¶481–490.
- IV. CONFIDENTIALITY AND DISCLOSURE, ¶491–510.**
- V. ALTERATION, INVALIDATION, OR TERMINATION, ¶511–530.**
- VI. ACTIONS AND PROCEEDINGS, ¶531–620.**
- (A) IN GENERAL, ¶531–550.
  - (B) PLEADING, ¶551–560.
  - (C) EVIDENCE, ¶561–580.
  - (D) COURSE AND CONDUCT OF PROCEEDINGS, ¶581–600.
  - (E) JUDGMENT AND RELIEF, ¶601–610.
  - (F) COSTS AND FEES, ¶611–620.
- VII. APPROVAL OF SETTLEMENTS, ¶621–720.**
- (A) IN GENERAL, ¶621–640.
  - (B) FACTORS CONSIDERED, ¶641–660.
  - (C) PARTICULAR SUBJECTS, CLAIMS, AND DISPUTES, ¶661–690.
  - (D) PROCEEDINGS FOR APPROVAL, ¶691–720.
- VIII. ADMINISTRATION AND SUPERVISION OF SETTLEMENTS, ¶721–733.**

**I. IN GENERAL.**

- 201. In general.
- 202. Statutory and regulatory provisions.
- 203. — In general.
- 204. — Purpose and construction in general.
- 205. — Validity.
- 206. — Retroactive or prospective operation.
- 207. What law governs.
- 208. Relation between state and federal law; preemption.

**II. NATURE AND REQUISITES.****(A) IN GENERAL.**

- 211. In general.

**II. NATURE AND REQUISITES.(Cont'd)**

- 212. Release in general.
- 213. Settlement and release compared or distinguished.
- 214. Contractual nature and requisites in general.
- 215. — In general.
- 216. — Certainty and definiteness.
- 217. — Intent of parties; assent.
  - (1). In general.
  - (2). Knowledge and voluntariness.
  - (3). Mutuality; meeting of the minds.
- 218. — Mutuality of obligation.
- 219. — Finality and completeness.
  - (1). In general.
  - (2). Time of making.
  - (3). Negotiations and preliminary agreements.
  - (4). Agreements to agree.
- 220. — Conditions.
- 221. Status as favored or disfavored; public policy.
- 222. Particular modes of settlement or release.
- 223. — In general.
- 224. — Stipulation of settlement.
- 225. — Partial settlement.
- 226. — Structured settlement.
- 227. — High-low agreement.
- 228. — General release.
- 229. — Covenant not to sue.
- 230. — Covenant not to execute.
- 231. — Acquittance or receipt.
- 232. Particular subjects, claims, and disputes.
- 233. — In general.
- 234. — Future, unknown, or after-arising claims in general.
- 235. — Claims by or against public entities, officers, and employees in general.
- 236. — Administrative proceedings, claims, and settlements in general.
- 237. — Torts and personal injuries.
- 238. — Property.
- 239. — Contracts.
- 240. — Constitutional claims, civil rights, and discrimination in general.
- 241. — Labor and employment.
  - (1). In general.

**89. COMPROMISE, SETTLEMENT, AND RELEASE****II. NATURE AND REQUISITES.(Cont'd)**

- (2). Pensions and benefits.
- (3). Employment discrimination.
- 242. — Antitrust, trade regulation, fraud, and consumer protection.
- 243. — Finance, banking, and credit.
- 244. — Securities.
- 245. — Health and medical care.
- 246. — Environment and natural resources.
- (1). In general.
- (2). Mines and minerals; oil and gas.
- 247. — Copyrights, patents, and trademarks; intellectual property.
- 248. — Conspiracy and racketeering.
- 249. — Prisons, jails, and convicts.
- 250. — Costs and fees of litigation.
- 251. Persons participating in settlement or release; parties.
- 252. — In general.
- 253. — Right or authority to participate.
- 254. — Representatives and fiduciaries.
- 255. Multiple claimants, plaintiffs, or defendants.
- 256. — In general.
- 257. — Class actions, claims, and settlements.
- 258. — Multiple or joint tortfeasors.
- 259. — Settlement with fewer than all defendants; “Mary Carter” agreements.
- 260. Derivative actions, claims, and settlements.

**(B) OFFER AND ACCEPTANCE.**

- 271. In general.
- 272. Duration of offer; time for acceptance.
- 273. Withdrawal or revocation of offer.
- 274. Variance between offer and acceptance; additional terms.
- 275. Rejection and counteroffer.

**(C) CONSIDERATION.**

- 281. In general; necessity.
- 282. Necessity of consideration for release.
- 283. — In general.
- 284. — Instruments in writing or under seal.
- 285. Nature and sufficiency of consideration.
- 286. — In general.
- 287. — Release in general.

**II. NATURE AND REQUISITES.(Cont'd)**

- 288. — Unliquidated, disputed, or doubtful claims in general.
- 289. — Avoidance, settlement, or dismissal of suit.
- 290. — Invalid or groundless claims.
- 291. — Conflicting titles to land.
- 292. — Performance of legal obligation.
- 293. — Payment of disputed claims.
- 294. — Part payment.
- 295. — Promise to employ.
- 296. — Mutual releases.
- 297. Adequacy of consideration.
- 298. — In general.
- 299. — Release.
- 300. Absence or failure of consideration.
- 301. Consideration for covenant not to sue or execute.

**(D) EXPRESSION OF AGREEMENT; EXECUTION.**

- 311. In general.
- 312. Oral or written.
- 313. Open court.
- 314. Filing or entry in record.
- 315. Signature.
- 316. Delivery.
- 317. Place of making.

**(E) PARTICULAR GROUNDS OF INVALIDITY OR UNENFORCEABILITY.**

- 321. In general.
- 322. Capacity of parties.
- 323. Mistake, ignorance, or accident.
- 324. — In general.
- 325. — Unilateral mistake in general.
- 326. — Ignorance of contents; duty to read.
- 327. — Mistake or ignorance of fact.
- 328. — Mistake or ignorance of law.
- 329. — Mutual mistake.
- 330. Fraud, misrepresentation, or collusion.
- 331. — In general.
- 332. — Materiality and reliance.
- 333. — Knowledge and intent.
- 334. — Tort and personal injury claims, representations concerning.
- 335. Forgery.
- 336. Duress.
- 337. — In general.

**89. COMPROMISE, SETTLEMENT, AND RELEASE****II. NATURE AND REQUISITES.(Cont'd)**

- 338. — Physical force or violence.
- 339. — Threats.
- 340. — Economic duress.
- 341. Undue influence.
- 342. Illegality.
- 343. — In general.
- 344. — Violation of statute or public policy in general.
- 345. — Particular modes of settlement or release.
- 346. — Particular subjects, claims, and disputes.
  - (1). In general.
  - (2). Labor and employment.
- 347. Unreasonable or oppressive contracts.
- 348. — In general.
- 349. — Adhesion contracts.
- 350. — Unconscionability.

**(F) EFFECT OF INVALIDITY.**

- 361. In general.
- 362. Partial invalidity; severability.

**III. CONSTRUCTION, OPERATION, AND EFFECT.****(A) IN GENERAL.**

- 371. In general.
- 372. General rules of construction.
- 373. — In general.
- 374. — Construction as contract.
- 375. — Particular modes of settlement or release, construction of.
  - (1). In general.
  - (2). Stipulation of settlement.
  - (3). General release.
  - (4). Covenant not to sue or execute.
- 376. — Language and intent in general.
- 377. — Plain language; plain, ordinary, or common meaning.
- 378. — Clarity and ambiguity; multiple meanings.
- 379. — Construction as a whole.
- 380. — Construction against drafter.
- 381. — Construing documents together.
- 382. — Extrinsic circumstances; construction by parties.
- 383. Duties, rights, and violations in general.
- 384. — In general.

**III. CONSTRUCTION, OPERATION, AND EFFECT.(Cont'd)**

- 385. — Performance and breach.
- 386. — Conditions and excuses.
- 387. Enforcement in general.
- 388. — In general.
- 389. — Enforcement as contract.
- 390. — Role, authority, and discretion of court.
- 391. Relation to and effect on pending proceeding.
- 392. — In general.
- 393. — Judgment in pending proceeding.
- 394. Discharge from liability.
- 395. Conclusiveness.
- 396. — In general.
- 397. — Res judicata.
- 398. — Collateral estoppel.
- 399. — Collateral attack.

**(B) MATTERS INCLUDED OR AFFECTED.**

- 411. In general.
- 412. Future, unknown, or after-arising claims in general.
- 413. Particular subjects, claims, and disputes.
- 414. — In general.
- 415. — Torts and personal injuries.
- 416. — Property.
- 417. — Contracts.
- 418. — Constitutional claims, civil rights, and discrimination in general.
- 419. — Labor and employment.
  - (1). In general.
  - (2). Pensions and benefits.
  - (3). Employment discrimination.
- 420. — Antitrust, trade regulation, fraud, and consumer protection.
- 421. — Finance, banking, and credit.
- 422. — Securities.
- 423. — Health and medical care.
- 424. — Environment and natural resources.
  - (1). In general.
  - (2). Mines and minerals; oil and gas.
- 425. — Copyrights, patents, and trademarks; intellectual property.
- 426. — Conspiracy and racketeering.
- 427. — Prisons, jails, and convicts.

**89. COMPROMISE, SETTLEMENT, AND RELEASE****III. CONSTRUCTION, OPERATION,  
AND EFFECT.(Cont'd)**

428. — Costs and fees of litigation.  
 429. Claims expressly excluded.

**(C) PERSONS AFFECTED.**

441. In general.  
 442. Nonparties in general.  
 443. Principals and agents or sureties.  
 444. Employers and employees.  
 445. Associations and organizations.  
 446. — In general.  
 447. — Corporations and business organizations.  
 448. — Partnerships.  
 449. Successors or related entities.  
 450. Public entities, officers, and employees.

**(D) MULTIPLE CLAIMANTS, PLAINTIFFS,  
OR DEFENDANTS.**

461. In general.  
 462. Class actions, claims, and settlements.  
 463. Multiple or joint obligors.  
 464. — In general.  
 465. — Intention of parties.  
 466. — Reservation of right against other obligors.  
 467. — Necessity of seal.  
 468. Multiple or joint wrongdoers.  
 469. — In general.  
 470. — Existence of joint liability.  
 471. — Reservation of right against other wrongdoers.  
 472. — Necessity of seal.  
 473. Settlement with fewer than all defendants; “Mary Carter” agreements.

**(E) DERIVATIVE ACTIONS, CLAIMS,  
AND SETTLEMENTS.**

481. In general.  
 482. Corporations and business organizations.  
 483. Loss of services, society, or consortium.

**IV. CONFIDENTIALITY AND DISCLOSURE.**

491. In general.  
 492. Confidentiality provisions.  
 493. — In general.  
 494. — Validity and enforceability.  
 495. — Construction, operation, and effect.

**IV. CONFIDENTIALITY AND  
DISCLOSURE.(Cont'd)**

496. Disclosure requirements.  
 497. — In general.  
 498. — Settlement with fewer than all defendants; “Mary Carter” agreements.  
 499. — High-low agreements.

**V. ALTERATION, INVALIDATION,  
OR TERMINATION.**

511. In general.  
 512. Contesting validity of release or covenant in general.  
 513. Particular acts or remedies.  
 514. — In general.  
 515. — Revocation, repudiation, abandonment, or withdrawal.  
 516. — Rescission, cancellation, avoidance, or annulment.  
 517. — Opening, vacating, or setting aside.  
 518. — Correction, modification, or amendment.  
 519. Persons entitled to seek.  
 520. Ratification or recognition of validity.  
 521. Estoppel and waiver.  
 522. Consideration.  
 523. — In general.  
 524. — Restoration of consideration.  
 525. Construction, operation, and effect.

**VI. ACTIONS AND PROCEEDINGS.****(A) IN GENERAL.**

531. In general.  
 532. Nature and form of proceeding.  
 533. — In general.  
 534. — Proceedings concerning breach.  
 535. — Proceedings concerning confidentiality and disclosure.  
 536. — Proceedings to alter, invalidate, or terminate.  
 537. Exclusive, concurrent, and conflicting remedies.  
 538. Defenses in general.  
 539. Conditions precedent.  
 540. Exhaustion of other remedies.  
 541. Jurisdiction and venue.  
 542. Time for proceedings; limitations and laches.  
 543. — In general.

**89. COMPROMISE, SETTLEMENT, AND RELEASE****VI. ACTIONS AND PROCEEDINGS.(Cont'd)**

544. — Proceedings to alter, invalidate, or terminate.
545. Persons by or against whom proceedings may be brought; parties; standing.

**(B) PLEADING.**

551. In general.
552. Pleading compromise or settlement as defense.
553. Pleading release or covenant.
554. — In general.
555. — Pleading in anticipation of defense.
556. — Pleading release or covenant as defense.
557. — Pleading in avoidance of defense.
558. Variance between pleading and proof.

**(C) EVIDENCE.**

561. In general.
562. Presumptions, inferences, and burden of proof.
563. — In general.
564. — Consideration.
565. — Validity and enforceability.
- (1). In general.
- (2). Capacity of parties.
- (3). Mistake, ignorance, or accident.
- (4). Fraud, misrepresentation, or collusion.
- (5). Duress or undue influence.
566. — Performance and breach.
567. — Confidentiality and disclosure.
568. Admissibility.
569. Degree of proof.
570. Weight and sufficiency.
571. — In general.
572. — Consideration.
573. — Validity and enforceability.
- (1). In general.
- (2). Capacity of parties.
- (3). Mistake, ignorance, or accident.
- (4). Fraud, misrepresentation, or collusion.
- (5). Duress or undue influence.
574. — Performance and breach.
575. — Confidentiality and disclosure.

**(D) COURSE AND CONDUCT OF PROCEEDINGS.**

581. In general.
582. Trial or hearing.
583. — In general.
584. — Necessity.
585. — Time for trial or hearing.
586. Questions of law or fact.
587. — In general.
588. — Consideration.
589. — Validity and enforceability.
- (1). In general.
- (2). Capacity of parties.
- (3). Mistake, ignorance, or accident.
- (4). Fraud, misrepresentation, or collusion.
- (5). Duress or undue influence.
590. — Performance and breach.
591. — Confidentiality and disclosure.
592. Instructions.
593. — In general.
594. — Consideration.
595. — Validity and enforceability.
- (1). In general.
- (2). Capacity of parties.
- (3). Mistake, ignorance, or accident.
- (4). Fraud, misrepresentation, or collusion.
- (5). Duress or undue influence.
596. — Performance and breach.
597. — Confidentiality and disclosure.
598. Verdict, findings, and conclusions.
599. Reconsideration.

**(E) JUDGMENT AND RELIEF.**

601. In general.
602. Injunction.
603. Contempt.

**(F) COSTS AND FEES.**

611. In general.
612. Attorney fees.
613. — In general.
614. — Compromise or settlement as creating grounds for award.
615. — Proceedings for enforcement, award in.
616. — Class settlements.
617. Proceedings to impose; taxation.

**89. COMPROMISE, SETTLEMENT, AND RELEASE****VII. APPROVAL OF SETTLEMENTS.****(A) IN GENERAL.**

- 621. In general.
- 622. Judicial approval in general.
- 623. Role, authority, and discretion of court.
- 624. — In general.
- 625. — Court as fiduciary.
- 626. — Power to modify settlement.
- 627. Necessity of approval.
- 628. — In general.
- 629. — Claims by representatives and fiduciaries in general.
- 630. — Class actions, claims, and settlements.
- 631. — Derivative actions, claims, and settlements.
- 632. — Administrative proceedings, claims, and settlements.

**(B) FACTORS CONSIDERED.**

- 641. In general.
- 642. Fairness, adequacy, and reasonableness in general.
- 643. Class actions, claims, and settlements in general.
- 644. Preliminary or conditional approval in general.
- 645. Complexity, expense, and duration of litigation.
- 646. Stage of proceedings.
- 647. Probability of success.
- 648. Range of possible recovery.
- 649. Views of parties, claimants, or class members; opposition or approval.
- 650. Views or advice of counsel.
- 651. Adequacy of representation.
- 652. Negotiation at arm's length; fraud or collusion.
- 653. Nature of relief provided and method of distribution.
- 654. — In general.
- 655. — Discounts and coupons.
- 656. — Indirect compensation; cy pres awards.
- 657. Plaintiff-shopping; reverse auctions.

**(C) PARTICULAR SUBJECTS, CLAIMS, AND DISPUTES.**

- 661. In general.

**VII. APPROVAL OF SETTLEMENTS.(Cont'd)**

- 662. Claims by or against public entities, officers, and employees in general.
- 663. Administrative proceedings, claims, and settlements in general.
- 664. Torts and personal injuries.
- 665. Property.
- 666. Contracts.
- 667. Constitutional claims, civil rights, and discrimination in general.
- 668. Labor and employment.
- 669. — In general.
- 670. — Pensions and benefits.
- 671. — Employment discrimination.
- 672. Antitrust, trade regulation, fraud, and consumer protection.
- 673. Finance, banking, and credit.
- 674. Securities.
- 675. Health and medical care.
- 676. Environment and natural resources.
- 677. — In general.
- 678. — Mines and minerals; oil and gas.
- 679. Copyrights, patents, and trademarks; intellectual property.
- 680. Conspiracy and racketeering.
- 681. Prisons, jails, and convicts.
- 682. Costs and fees of litigation.
- 683. — In general.
- 684. — "Clear sailing" provisions.
- 685. Derivative actions, claims, and settlements.
- 686. — In general.
- 687. — Corporations and business organizations.
- 688. — Loss of services, society, or consortium.

**(D) PROCEEDINGS FOR APPROVAL.**

- 691. In general.
- 692. Nature and form of proceedings.
- 693. Jurisdiction.
- 694. Motion or other request for approval.
- 695. — In general.
- 696. — Persons entitled to seek approval; standing.
- 697. — Form, requisites, and sufficiency.

**89. COMPROMISE, SETTLEMENT, AND RELEASE****VII. APPROVAL OF SETTLEMENTS.**(Cont'd)

- 698. — Time for motion or request.
- 699. Notice and communications.
- 700. — In general.
- 701. — Persons entitled to receive.
- 702. — Form, requisites, and sufficiency.
- 703. — Time for notice and communications.
- 704. Objections.
- 705. — In general.
- 706. — Persons entitled to object or respond; standing.
- 707. — Form, requisites, and sufficiency.
- 708. — Time for objections.
- 709. Hearing.
- 710. — In general.
- 711. — Time for hearing.
- 712. Evidence; affidavits.
- 713. — In general.
- 714. — Presumptions, inferences, and burden of proof.
- 715. Findings, conclusions, and determination.
- 716. — In general.
- 717. — Time for determination.
- 718. Reconsideration.
- 719. Costs and fees concerning approval proceedings.

**VIII. ADMINISTRATION AND SUPERVISION OF SETTLEMENTS.**

- 721. In general.
- 722. Administrators and supervisors.
- 723. — In general.
- 724. — Appointment and removal.
- 725. — Powers, duties, rights, and liabilities.
- 726. Processing and payment of claims; distribution of funds.
- 727. — In general.
- 728. — Time for filing claims; late claims.
- 729. — Disposition of unclaimed or undistributed funds in general.
- 730. — Pro rata distribution.
- 731. — Distribution to third parties; cy pres.

- 732. Costs, fees, and expenses concerning administration and supervision.
- 733. Review.

**90. CONFUSION OF GOODS****SUBJECTS INCLUDED**

Intermixture of goods of the same kind belonging to different owners

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Addition of different materials, see PROPERTY III(B)

Warehousemen, intermingling of goods by, see WAREHOUSEMEN

- I. NATURE AND EFFECT, ¶1–5.
- II. RIGHTS AND REMEDIES OF PERSONS INTERESTED, ¶6–15.

**I. NATURE AND EFFECT.**

- 1. Application of doctrine in general.
- 2. Nature and extent of intermixture.
- 3. — In general.
- 4. — Goods capable of identification and separation.
- 5. Intermixture by mistake or accident, and wrongful intermixture.

**II. RIGHTS AND REMEDIES OF PERSONS INTERESTED.**

- 6. Rights as to property.
- 6.1. — In general.
- 7. — Owners in general.
- 8. — Owners and bailees, agents, or trustees.
- 9. — Mortgagors and mortgagees.
- 10. Right to compensation or damages.
- 11. Rights of creditors and other third persons.
- 12. Remedies of owners and others interested.
- 13. Evidence as to ownership or interest.
- 14. Measure of damages.
- 15. Questions for jury.

**91. CONSPIRACY****91. CONSPIRACY****SUBJECTS INCLUDED**

Combinations of two or more persons to do an unlawful act, whether such act be the object of the combination or means of accomplishing that object, and whether it be injurious to private persons only or to the public

Nature and extent of liability for injuries caused by such conspiracies

Actions for damages therefor

Criminal responsibility for conspiracies in general, and prosecution and punishment thereof as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Declarations and admissions of conspirators as evidence, and testimony of conspirators, see CRIMINAL LAW

Monopolization of trade, combinations for, see ANTITRUST AND TRADE REGULATION

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- I. IN GENERAL, ¶101–110.
  - II. CRIMINAL RESPONSIBILITY, ¶111–470.
    - (A) IN GENERAL, ¶111–150.
    - (B) PARTICULAR SUBJECTS OF CRIMINAL CONSPIRACY, ¶151–200.
    - (C) CONSPIRACY AS INDEPENDENT OFFENSE; NECESSITY OF AND RELATIONSHIP TO UNDERLYING WRONG, ¶201–210.
    - (D) SINGLE OR MULTIPLE CONSPIRACIES, ¶211–220.
    - (E) DEFENSES AND MITIGATING CIRCUMSTANCES, ¶221–230.
    - (F) PERSONS LIABLE, ¶231–240.
    - (G) PROSECUTIONS IN GENERAL, ¶241–250.
    - (H) INDICTMENT OR OTHER CHARGING INSTRUMENT, ¶251–300.
    - (I) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF, ¶301–320.
    - (J) ADMISSIBILITY OF EVIDENCE, ¶321–340.
    - (K) WEIGHT AND SUFFICIENCY OF EVIDENCE, ¶341–390.

II. CRIMINAL RESPONSIBILITY—Cont'd

- (L) QUESTIONS OF LAW OR FACT, ¶391–410.

- (M) INSTRUCTIONS, ¶411–430.

- (N) SENTENCE AND PUNISHMENT, ¶431–470.

III. CIVIL LIABILITY, ¶471–682.

- (A) IN GENERAL, ¶471–510.

- (B) PARTICULAR SUBJECTS OF CIVIL CONSPIRACY, ¶511–540.

- (C) CIVIL RIGHTS CONSPIRACIES, ¶541–570.

- (D) ORGANIZATIONS AND ENTITIES AS CONSPIRATORS, ¶571–590.

- (E) DEFENSES AND MITIGATING CIRCUMSTANCES, ¶591–600.

- (F) PERSONS LIABLE, ¶601–620.

- (G) ACTIONS IN GENERAL, ¶621–630.

- (H) PLEADING, ¶631–640.

- (I) EVIDENCE, ¶641–660.

- (J) DAMAGES, ¶661–670.

- (K) TRIAL, ¶671–682.

**I. IN GENERAL.**

- 101. In general.
- 102. Statutory and regulatory provisions.
- 103. — In general.
- 104. — Purpose and construction in general.
- 105. — Power to enact; validity.
  - (1). In general.
  - (2). Criminal responsibility.
  - (3). Civil liability.
- 106. — Retroactive or prospective operation.
- 107. What law governs.
- 108. Relation between state and federal law; preemption.

**II. CRIMINAL RESPONSIBILITY.****(A) IN GENERAL.**

- 111. In general.
- 112. Definition and elements of criminal conspiracy in general.
- 113. Grade or degree of offense in general.
- 114. Combination or agreement.
- 115. — In general.
- 116. — As essence of conspiracy.
- 117. — Interdependence.
- 118. — Form of agreement; express or implied agreement.



**91. CONSPIRACY****II. CRIMINAL RESPONSIBILITY.**(Cont'd)

- 119. Object of conspiracy.
- 120. Means of accomplishing conspiracy.
- 121. Lawfulness of object or means.
- 122. Act or conduct in furtherance of conspiracy.
- 123. — In general.
- 124. — Overt act.
- 125. Damage, injury, or harm; causation.
- 126. Commencement, duration, and termination of conspiracy.
- 127. — In general.
- 128. — Continuing conspiracy.
- 129. Success; attainment of objective.
- 130. Persons conspiring.
- 131. — In general.
- 132. — Necessity of culpable coconspirator.
- 133. — Effect of acquittal, dismissal, or discharge of alleged coconspirator.
- 134. — Feigned or pretended agreement.
- 135. — Informer or government agent as coconspirator.
- 136. — Uncharged or unknown coconspirators.
- 137. — Number of persons conspiring.
- 138. — Extent of participation in conspiracy.
  - (1). In general.
  - (2). Time of joining conspiracy.
  - (3). Active participation; mere presence.
- 139. — Principal and agent; organizations and entities.
- 140. Knowledge and intent.
- 141. — In general.
- 142. — Knowledge and intent as to combination, agreement, and participation.
- 143. — Intent to commit act or engage in conduct.
  - (1). In general.
  - (2). Intent to commit underlying offense or other object of conspiracy.
- 144. — Intent to damage, injure, or harm.
- 145. — Specific intent.
- 146. Attempted conspiracy.

**(B) PARTICULAR SUBJECTS OF CRIMINAL CONSPIRACY.**

- 151. In general.
- 152. Racketeering conspiracies in general.
- 153. Arson and malicious mischief.
- 154. Assault and battery.
- 155. Burglary and trespass.
- 156. Civil rights, conspiring to deprive.
- 157. — In general.
- 158. — Peonage, slavery, and involuntary servitude; Thirteenth Amendment.
- 159. Controlled substances.
- 160. — In general.
- 161. — Agreement; buyer-seller rule.
- 162. — Particular substances.
  - (1). In general.
  - (2). Amphetamine, methamphetamine, and MDMA.
  - (3). Cocaine.
  - (4). Heroin and opioids.
  - (5). Marijuana, cannabis, and cannabinoids.
- 163. — Knowledge, intent, and participation.
- 164. Counterfeiting and forgery.
- 165. Disorderly conduct, breach of the peace, and riot.
- 166. Elections and political activity, offenses concerning.
- 167. Escape.
- 168. Extortion, threats, stalking, and harassment.
- 169. Fraud and false pretenses.
- 170. — In general.
- 171. — Particular practices.
  - (1). In general.
  - (2). Bank fraud.
  - (3). Mail and wire fraud.
  - (4). Fraud against government in general.
  - (5). False claims.
  - (6). Health care and medical benefits fraud.
- 172. — Knowledge, intent, and participation.
- 173. Gambling offenses.
- 174. Homicide and assault with intent to kill.
- 175. Human trafficking.
- 176. Immigration offenses.
- 177. Kidnapping and false imprisonment.

**91. CONSPIRACY****II. CRIMINAL RESPONSIBILITY.(Cont'd)**

- 178. Larceny, embezzlement, and receiving stolen property.
- 179. Liquor offenses.
- 180. Minors and endangered persons, of-fenses specific to.
- 181. Money laundering.
- 182. Motor vehicle offenses.
- 183. Obscenity and lewdness.
- 184. Obstructing justice, bribery, and perjury.
- 185. Robbery.
- 186. Securities offenses.
- 187. Sex offenses, incest, and prostitution.
- 188. Tax, internal revenue, and customs of-fenses.
- 189. Terrorism, torture, and hostage taking.
- 190. Weapons and explosives.
- 191. Other particular offenses.
- 192. Multiple offenses.

**(C) CONSPIRACY AS INDEPENDENT OFFENSE; NECESSITY OF AND RELATIONSHIP TO UNDERLYING WRONG.**

- 201. In general.
- 202. Conspiracy as inchoate offense in gener-al.
- 203. Necessity of substantive offense.
- 204. Completion of substantive offense.
- 205. Merger of conspiracy in substantive of-fense.
- 206. Number of persons necessary to commit substantive offense; Wharton's rule.
- 207. — In general.
- 208. — Particular substantive offenses.

**(D) SINGLE OR MULTIPLE CONSPIRACIES.**

- 211. In general.
- 212. Unity of knowledge, acquaintance, and participation in general.
- 213. Wheel or chain conspiracy in general.
- 214. Controlled substances and intoxicating liquors.
- 215. Fraud and false pretenses.
- 216. Other particular subjects and offenses.

**(E) DEFENSES AND MITIGATING CIRCUMSTANCES.**

- 221. In general.
- 222. Privilege or immunity; good faith.
- 223. Withdrawal, abandonment, or renuncia-tion.

**II. CRIMINAL RESPONSIBILITY.(Cont'd)**

- 224. — In general.
- 225. — Controlled substances and intoxi-cating liquors.
- 226. — Fraud and false pretenses.
- 227. — Other particular subjects and of-fenses.

**(F) PERSONS LIABLE.**

- 231. In general.
- 232. Capacity.
- 233. — In general.
- 234. — Capacity to commit underlying of-fense.
- 235. Liability for acts of coconspirators; Pinkerton doctrine.
- 236. Principals, accessories, and accomplices.
- 237. Aiding and abetting.

**(G) PROSECUTIONS IN GENERAL.**

- 241. In general.
- 242. Verdict and findings.

**(H) INDICTMENT OR OTHER CHARGING INSTRUMENT.**

- 251. In general.
- 252. Combination or agreement.
- 253. Object of conspiracy, means of accom-plishing, and conduct in furtherance.
- 254. — In general.
- 255. — Overt act.
- 256. Duration of conspiracy; success; attain-ment of objective.
- 257. Knowledge and intent.
- 258. Particular subjects of conspiracy.
- 259. — In general.
- 260. — Racketeering conspiracies in gen-eral.
- 261. — Arson and malicious mischief.
- 262. — Assault and battery.
- 263. — Burglary and trespass.
- 264. — Civil rights, conspiring to deprive.
- 265. — Controlled substances.
  - (1). In general.
  - (2). Amphetamine, methamphetamine, and MDMA.
  - (3). Cocaine.
  - (4). Heroin and opioids.
  - (5). Marijuana, cannabis, and cannabi-noids.

**91. CONSPIRACY****II. CRIMINAL RESPONSIBILITY.(Cont'd)**

- (6). Other particular substances.
- 266. — Counterfeiting and forgery.
- 267. — Disorderly conduct, breach of the peace, and riot.
- 268. — Elections and political activity, offenses concerning.
- 269. — Escape.
- 270. — Extortion, threats, stalking, and harassment.
- 271. — Fraud and false pretenses.
  - (1). In general.
  - (2). Bank fraud.
  - (3). Mail and wire fraud.
  - (4). Fraud against government in general.
  - (5). False claims.
  - (6). Health care and medical benefits fraud.
- 272. — Gambling offenses.
- 273. — Homicide and assault with intent to kill.
- 274. — Human trafficking.
- 275. — Immigration offenses.
- 276. — Kidnapping and false imprisonment.
- 277. — Larceny, embezzlement, and receiving stolen property.
- 278. — Liquor offenses.
- 279. — Minors and endangered persons, offenses specific to.
- 280. — Money laundering.
- 281. — Motor vehicle offenses.
- 282. — Obscenity and lewdness.
- 283. — Obstructing justice, bribery, and perjury.
- 284. — Robbery.
- 285. — Securities offenses.
- 286. — Sex offenses, incest, and prostitution.
- 287. — Tax, internal revenue, and customs offenses.
- 288. — Terrorism, torture, and hostage taking.
- 289. — Weapons and explosives.
- 290. — Other particular offenses.
- 291. — Multiple offenses.
- 292. Variance between allegations and proof.
- 293. — In general.
- 294. — Particular subjects of conspiracy.

**II. CRIMINAL RESPONSIBILITY.(Cont'd)**

- (1). In general.
- (2). Controlled substances and intoxicating liquors.
- (3). Fraud and false pretenses.
- 295. — Single or multiple conspiracies.
  - (1). In general.
  - (2). Controlled substances and intoxicating liquors.
  - (3). Fraud and false pretenses.
  - (4). Other particular subjects and offenses.

**(I) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF.**

- 301. In general.
- 302. Combination or agreement.
- 303. Object of conspiracy, means of accomplishing, and conduct in furtherance.
- 304. — In general.
- 305. — Overt act.
- 306. Duration of conspiracy; success; attainment of objective.
- 307. Knowledge and intent.
- 308. Particular subjects of conspiracy.
- 309. — In general.
- 310. — Controlled substances and intoxicating liquors.
- 311. — Fraud and false pretenses.
- 312. Single or multiple conspiracies.
- 313. Defenses and mitigating circumstances.
- 314. — In general.
- 315. — Withdrawal, abandonment, or renunciation.

**(J) ADMISSIBILITY OF EVIDENCE.**

- 321. In general.
- 322. Combination or agreement.
- 323. Object of conspiracy, means of accomplishing, and conduct in furtherance.
- 324. — In general.
- 325. — Overt act.
- 326. Duration of conspiracy; success; attainment of objective.
- 327. Knowledge and intent.
- 328. Particular subjects of conspiracy.
- 329. — In general.
- 330. — Controlled substances and intoxicating liquors.
- 331. — Fraud and false pretenses.

**91. CONSPIRACY****II. CRIMINAL RESPONSIBILITY.(Cont'd)**

- 332. Single or multiple conspiracies.
- 333. Defenses and mitigating circumstances.
- 334. — In general.
- 335. — Withdrawal, abandonment, or renunciation.

**(K) WEIGHT AND SUFFICIENCY OF EVIDENCE.**

- 341. In general.
- 342. Direct or circumstantial evidence.
- 343. — In general.
- 344. — Inferences from circumstantial evidence.
- 345. — Mere presence.
- 346. Particular subjects of conspiracy.
- 347. — In general.
- 348. — Racketeering conspiracies in general.
- 349. — Arson and malicious mischief.
- 350. — Assault and battery.
- 351. — Burglary and trespass.
- 352. — Civil rights, conspiring to deprive.
  - (1). In general.
  - (2). Peonage, slavery, and involuntary servitude; Thirteenth Amendment.
- 353. — Controlled substances.
  - (1). In general.
  - (2). Amphetamine, methamphetamine, and MDMA.
  - (3). Cocaine.
  - (4). Heroin and opioids.
  - (5). Marijuana, cannabis, and cannabinoids.
  - (6). Other particular substances.
- 354. — Counterfeiting and forgery.
- 355. — Disorderly conduct, breach of the peace, and riot.
- 356. — Elections and political activity, offenses concerning.
- 357. — Escape.
- 358. — Extortion, threats, stalking, and harassment.
- 359. — Fraud and false pretenses.
  - (1). In general.
  - (2). Bank fraud.
  - (3). Mail and wire fraud.
  - (4). Fraud against government in general.
  - (5). False claims.

**II. CRIMINAL RESPONSIBILITY.(Cont'd)**

- (6). Health care and medical benefits fraud.
- 360. — Gambling offenses.
- 361. — Homicide and assault with intent to kill.
- 362. — Human trafficking.
- 363. — Immigration offenses.
- 364. — Kidnapping and false imprisonment.
- 365. — Larceny, embezzlement, and receiving stolen property.
- 366. — Liquor offenses.
- 367. — Minors and endangered persons, offenses specific to.
- 368. — Money laundering.
- 369. — Motor vehicle offenses.
- 370. — Obscenity and lewdness.
- 371. — Obstructing justice, bribery, and perjury.
- 372. — Robbery.
- 373. — Securities offenses.
- 374. — Sex offenses, incest, and prostitution.
- 375. — Tax, internal revenue, and customs offenses.
- 376. — Terrorism, torture, and hostage taking.
- 377. — Weapons and explosives.
- 378. — Other particular offenses.
- 379. — Multiple offenses.
- 380. Single or multiple conspiracies.
- 381. — In general.
- 382. — Controlled substances and intoxicating liquors.
- 383. — Fraud and false pretenses.
- 384. — Other particular subjects and offenses.
- 385. Defenses and mitigating circumstances.
- 386. — In general.
- 387. — Withdrawal, abandonment, or renunciation.

**(L) QUESTIONS OF LAW OR FACT.**

- 391. In general.
- 392. Particular subjects of conspiracy.
- 393. — In general.
- 394. — Controlled substances and intoxicating liquors.
- 395. — Fraud and false pretenses.

**91. CONSPIRACY****II. CRIMINAL RESPONSIBILITY.(Cont'd)**

- 396. Single or multiple conspiracies.
- 397. — In general.
- 398. — Controlled substances and intoxicating liquors.
- 399. — Fraud and false pretenses.
- 400. — Other particular subjects and offenses.
- 401. Defenses and mitigating circumstances.
- 402. — In general.
- 403. — Withdrawal, abandonment, or renunciation.

**(M) INSTRUCTIONS.**

- 411. In general.
- 412. Particular subjects of conspiracy.
- 413. — In general.
- 414. — Controlled substances and intoxicating liquors.
- 415. — Fraud and false pretenses.
- 416. Single or multiple conspiracies.
- 417. — In general.
- 418. — Controlled substances and intoxicating liquors.
- 419. — Fraud and false pretenses.
- 420. — Other particular subjects and offenses.
- 421. Defenses and mitigating circumstances.
- 422. — In general.
- 423. — Withdrawal, abandonment, or renunciation.

**(N) SENTENCE AND PUNISHMENT.**

- 431. In general.
- 432. Particular subjects of conspiracy.
- 433. — In general.
- 434. — Racketeering conspiracies in general.
- 435. — Arson and malicious mischief.
- 436. — Assault and battery.
- 437. — Burglary and trespass.
- 438. — Civil rights, conspiring to deprive.
- 439. — Controlled substances.
  - (1). In general.
  - (2). Amphetamine, methamphetamine, and MDMA.
  - (3). Cocaine.
  - (4). Heroin and opioids.
  - (5). Marijuana, cannabis, and cannabinoids.

**II. CRIMINAL RESPONSIBILITY.(Cont'd)**

- (6). Other particular substances.
- (7). Exceptions to statutory minimums; “safety valve”.
- 440. — Counterfeiting and forgery.
- 441. — Disorderly conduct, breach of the peace, and riot.
- 442. — Elections and political activity, offenses concerning.
- 443. — Escape.
- 444. — Extortion, threats, stalking, and harassment.
- 445. — Fraud and false pretenses.
  - (1). In general.
  - (2). Bank fraud.
  - (3). Mail and wire fraud.
  - (4). Fraud against government in general.
  - (5). False claims.
  - (6). Health care and medical benefits fraud.
- 446. — Gambling offenses.
- 447. — Homicide and assault with intent to kill.
- 448. — Human trafficking.
- 449. — Immigration offenses.
- 450. — Kidnapping and false imprisonment.
- 451. — Larceny, embezzlement, and receiving stolen property.
- 452. — Liquor offenses.
- 453. — Minors and endangered persons, offenses specific to.
- 454. — Money laundering.
- 455. — Motor vehicle offenses.
- 456. — Obscenity and lewdness.
- 457. — Obstructing justice, bribery, and perjury.
- 458. — Robbery.
- 459. — Securities offenses.
- 460. — Sex offenses, incest, and prostitution.
- 461. — Tax, internal revenue, and customs offenses.
- 462. — Terrorism, torture, and hostage taking.
- 463. — Weapons and explosives.
- 464. — Other particular offenses.
- 465. — Multiple offenses.

**91. CONSPIRACY****III. CIVIL LIABILITY.****(A) IN GENERAL.**

- 471. In general.
- 472. Definition and elements of civil conspiracy in general.
- 473. Combination or agreement.
- 474. — In general.
- 475. — As essence of conspiracy.
- 476. — Meeting of the minds.
- 477. — Form of agreement; express or implied agreement.
- 478. Object of conspiracy.
- 479. Means of accomplishing conspiracy.
- 480. Lawfulness of object or means.
- 481. Act or conduct in furtherance of conspiracy.
- 482. — In general.
- 483. — Overt act.
- 484. Damage, injury, or harm; causation.
- 485. Commencement, duration, and termination of conspiracy.
- 486. — In general.
- 487. — Continuing conspiracy.
- 488. Success; attainment of objective.
- 489. Persons conspiring.
- 490. — In general.
- 491. — Number of persons conspiring.
- 492. — Principal and agent.
- 493. Knowledge and intent.
- 494. — In general.
- 495. — Conspiracy as intentional tort.
- 496. — Knowledge and intent as to combination, agreement, and participation.
  - (1). In general.
  - (2). Accidental, inadvertent, or negligent participation.
- 497. — Intent to commit act or engage in conduct.
- 498. — Intent to damage, injure, or harm.
- 499. — Malice.
- 500. — Specific intent.
- 501. Conspiracy as independent claim; necessity of and relationship to underlying wrong.
- 502. Force of numbers, economic influence, or other exceptional circumstances.

**(B) PARTICULAR SUBJECTS OF CIVIL CONSPIRACY.**

- 511. In general.

**III. CIVIL LIABILITY.(Cont'd)**

- 512. Racketeering conspiracies in general.
- 513. Personal interests, bodily injury, and particular torts in general.
- 514. Property interests and injury to property in general.
- 515. Business, trade, or commerce in general.
- 516. Reputational interests; defamation.
- 517. Contracts.
- 518. Labor and employment.
- 519. Intellectual property.
- 520. — In general.
- 521. — Trade secrets and proprietary information.
- 522. Fraud.
- 523. — In general.
- 524. — Fiduciary duties.
- 525. — Fraud against government; false claims.
- 526. Fraudulent transfers; hindering, delaying, or defeating creditors.
- 527. Securities.
- 528. Terrorism, torture, and hostage taking.
- 529. Human trafficking.

**(C) CIVIL RIGHTS CONSPIRACIES.**

- 541. In general.
- 542. Definition and elements in general.
- 543. — In general.
- 544. — Equal privileges and immunities; equal protection.
- 545. — Classes protected.
- 546. — Intent, motive, or animus.
- 547. Existence of independent claim; necessity of and relationship to underlying right or violation.
- 548. Particular rights or privileges; particular deprivations.
- 549. — In general.
- 550. — Due process.
- 551. — First Amendment and political rights.
- 552. — Right to travel.
- 553. — Abortion and reproductive rights.
- 554. — Law enforcement and criminal prosecution; Fourth Amendment.
- 555. — Peonage, slavery, and involuntary servitude; Thirteenth Amendment.
- 556. — Education.
- 557. — Labor and employment.

**91. CONSPIRACY****III. CIVIL LIABILITY.(Cont'd)**

- 558. — Prisons, jails, and convicts.
- 559. Preventing officer from performing duties.
- 560. Obstructing justice or judicial proceedings.
- 561. Color of law; state or private action.
- 562. — In general.
- 563. — Particular rights or privileges; particular deprivations.

**(D) ORGANIZATIONS AND ENTITIES AS CONSPIRATORS.**

- 571. In general.
- 572. Corporations and business organizations in general.
- 573. — In general.
- 574. — Intracorporate conspiracy doctrine in general.
- 575. — Conduct outside scope of employment; unauthorized acts.
- 576. — Personal stake or interest.
- 577. Government entities in general.
- 578. Particular conspiracies involving organizations and entities.
- 579. — In general.
- 580. — Corporations and business organizations.
- 581. — Government entities.
- 582. — Civil rights conspiracies.

**(E) DEFENSES AND MITIGATING CIRCUMSTANCES.**

- 591. In general.
- 592. Privilege or immunity; good faith.
- 593. — In general.
- 594. — Qualified immunity in general.
- 595. — Private persons or entities.
- 596. — Law enforcement officers.
- 597. — Judges, court personnel, and attorneys.
- 598. — Witnesses; testimonial immunity.
- 599. — Effect of immunity of coconspirator.
- 600. Withdrawal, abandonment, or renunciation.

**(F) PERSONS LIABLE.**

- 601. In general.
- 602. Capacity.
- 603. — In general.

**III. CIVIL LIABILITY.(Cont'd)**

- 604. — Capacity to commit underlying tort or violation.
- 605. Liability for acts of coconspirators in general.
- 606. Vicarious liability and respondeat superior in general.
- 607. Liability of government entities, officials, and employees.
- 608. — In general.
- 609. — Civil rights conspiracies.
- 610. Joint or several liability.

**(G) ACTIONS IN GENERAL.**

- 621. In general.
- 622. Nature, form, and right of action.
- 623. Conditions precedent.
- 624. Time to sue; limitations and laches.
- 625. Persons entitled to sue; parties; standing.

**(H) PLEADING.**

- 631. In general.
- 632. Certainty, definiteness, and particularity in general.
- 633. Particular subjects of conspiracy.
- 634. — In general.
- 635. — Civil rights conspiracies.
- 636. Answer or other responsive pleading.
- 637. Relation between pleadings and proof; conformity and variance.

**(I) EVIDENCE.**

- 641. In general.
- 642. Presumptions, inferences, and burden of proof.
- 643. — In general.
- 644. — Particular subjects of conspiracy.
  - (1). In general.
  - (2). Civil rights conspiracies.
- 645. — Defenses and mitigating circumstances.
- 646. Admissibility.
- 647. Degree of proof.
- 648. Weight and sufficiency.
- 649. — In general.
- 650. — Direct or circumstantial evidence in general.
- 651. — Particular subjects of conspiracy.
  - (1). In general.

**92. CONSTITUTIONAL LAW****III. CIVIL LIABILITY.(Cont'd)****(2). Civil rights conspiracies.**

652. — Defenses and mitigating circumstances.

**(J) DAMAGES.**

- 661. In general.
- 662. Amount awarded.
- 663. Aggravation and mitigation of damages.
- 664. Punitive or exemplary damages.
- 665. — In general.
- 666. — Amount awarded.
- 667. Nominal damages.
- 668. Evidence as to damages.

**(K) TRIAL.**

- 671. In general.
- 672. Questions of law or fact.
- 673. — In general.
- 674. — Particular subjects of conspiracy.
  - (1). In general.
  - (2). Civil rights conspiracies.
- 675. — Defenses and mitigating circumstances.
- 676. — Damages.
- 677. Instructions.
- 678. — In general.
- 679. — Particular subjects of conspiracy.
  - (1). In general.
  - (2). Civil rights conspiracies.
- 680. — Defenses and mitigating circumstances.
- 681. — Damages.
- 682. Verdict, findings, and judgment.

**92. CONSTITUTIONAL LAW****SUBJECTS INCLUDED**

The organic and fundamental law regulating the structure, frame, and methods of administration of government, and the relations between governments and those subject to them in general

More particularly, written instruments enacted as the supreme and paramount law

Adoption, amendment, and revision of written constitutions

Construction, operation, effect, and enforcement of constitutions

Distribution of powers and functions of government among different departments

Constitutional guarantees that provide broad protection of personal, political, or property rights, including, among others, due process, equal protection, privileges or immunities, ex post facto prohibitions, obligation of contract, freedom of speech, freedom of religion, right to privacy, freedom of association, right to travel, right of assembly, right to petition for redress of grievances, and access to courts

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Constitutional provisions that are limited in scope to narrow subjects, narrow powers and functions of governments, or particular political bodies or institutions

Abortion rights in general, see **ABORTION AND BIRTH CONTROL**

Actions to vindicate constitutional rights, see **CIVIL RIGHTS**

Appeal and error, constitutional provisions unique to, see **APPEAL AND ERROR, COURTS VI(B), CRIMINAL LAW, FEDERAL COURTS**

Appointments clause, see **UNITED STATES**

Appropriations clause, see **UNITED STATES**

Arrest, constitutional provisions unique to, see **ARREST**

Bail, excessiveness of, see **BAIL**

Bear arms, right to, see **WEAPONS**

Commerce, regulation of, see **COMMERCE**

Compulsory process, see **WITNESSES**

Confrontation of witnesses, see **CRIMINAL LAW**

Constitutional torts, see **CIVIL RIGHTS**

Counsel, assistance of, see **CRIMINAL LAW, TRIAL**

Criminal proceedings, constitutional provisions unique to, see **CRIMINAL LAW**

Cruel and unusual punishment, see **SENTENCING AND PUNISHMENT**

Double jeopardy, see **DOUBLE JEOPARDY**



**92. CONSTITUTIONAL LAW**

- Eminent domain, constitutional provisions unique to, see EMINENT DOMAIN
  - Federal preemption of state law, see STATES
  - Fines, excessiveness of, see FINES
  - Full faith and credit, see JUDGMENT, STATES
  - Guaranty of republican form of government, see STATES
  - Habeas corpus proceedings to vindicate constitutional rights, see HABEAS CORPUS
  - Import/export clause, see CUSTOMS DUTIES
  - Indictment, necessity of, see INDICTMENTS AND CHARGING INSTRUMENTS
  - Intoxicating liquors, constitutional provisions unique to, see ALCOHOLIC BEVERAGES
  - Jury, constitutional provisions unique to, see JURY
  - Marriage, constitutional provisions unique to, see MARRIAGE AND COHABITATION
  - Necessary and proper clause, see UNITED STATES
  - Political subdivisions of states, constitutional provisions as to organization and powers, see COUNTIES, EDUCATION, MUNICIPAL CORPORATIONS, and other specific topics
  - Proportionate penalties, see SENTENCING AND PUNISHMENT
  - Public employees and officials, constitutional provisions relating to appointment, qualifications, or discharge, see MUNICIPAL CORPORATIONS, OFFICERS AND PUBLIC EMPLOYEES, STATES, UNITED STATES, and other specific topics
  - Qualifications clause, see UNITED STATES
  - Retroactivity of statutes, see STATUTES
  - Searches and seizures, constitutional provisions unique to, see SEARCHES AND SEIZURES
  - Self-incrimination, see CRIMINAL LAW, WITNESSES
  - Severability of unconstitutional statutory provisions, see STATUTES
  - Single-subject requirement for statutes, see STATUTES
  - Sovereign immunity in federal court, see FEDERAL COURTS
  - Special and local laws, see STATUTES
  - Speech or debate clause, see UNITED STATES
  - Speedy trial, see CRIMINAL LAW
  - Standing to raise non-constitutional claims, see ACTION, FEDERAL CIVIL PROCEDURE, and other specific topics
  - State government, finances, and powers, constitutional provisions unique to, see STATES
  - Statutes, constitutional provisions relating to enactment and form, see STATUTES
  - Supremacy of federal law, see STATES
  - Takings clause, see EMINENT DOMAIN
  - Titles of statutes, see STATUTES
  - Treaties, see INTERNATIONAL LAW IV
  - Victims' rights, see CRIMINAL LAW
  - Uniformity of statutes, see STATUTES
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  - II. ADOPTION OF CONSTITUTIONS, ¶505–514.
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    - (B) UNITED STATES CONSTITUTION, ¶520–524.
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  - V. CONSTRUCTION AND OPERATION OF CONSTITUTIONAL PROVISIONS, ¶580–664.
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- 611. — Legislative construction.
- 612. — Executive construction.
- 613. Relation to common law.
- 614. Relation to statutory law.
- 615. Relation to former constitution.
- 616. Relation to constitutions of other jurisdictions.
- 617. — In general.
- 618. — Provisions taken from other constitutions.
- 619. Construction as mandatory or directory.

**(B) TIME OF TAKING EFFECT.**

- 625. In general.

**(C) RETROACTIVE OPERATION.**

- 630. In general.
- 631. Operation as to agreements previously in force.
- 632. Operation as to statutes previously in force.
- 633. Operation as to constitutional provisions previously in force.

**(D) CONSTRUCTION AS GRANT OR LIMITATION  
OF POWERS; RETAINED RIGHTS.**

- 635. In general.
- 636. United States Constitution.
- 637. — In general.
- 638. — Application to states.
- 639. State constitutions.

**(E) SELF-EXECUTING PROVISIONS.**

- 640. In general.
- 641. Particular provisions.
- 642. — In general.
- 643. — Establishment and jurisdiction of courts.
- 644. — Privacy.
- 645. — Search and seizure.
- 646. — Due process.
- 647. — Equal protection.
- 648. — Open courts; access to courts.
- 649. — Self-incrimination.
- 650. — Eminent domain.
- 651. — Taxation and revenue.

**(F) CONSTITUTIONALITY OF STATUTORY  
PROVISIONS.**

- 655. In general.
- 656. Facial invalidity.
- 657. Invalidity as applied.
- 658. Statutory abrogation of constitutional right.
- 659. Statutory provision of greater protection than constitution.
- 660. Contravention of natural justice or common right.
- 661. Contravention of spirit of constitution.

**VI. ENFORCEMENT OF CONSTITUTIONAL  
PROVISIONS.****(A) PERSONS ENTITLED TO RAISE  
CONSTITUTIONAL QUESTIONS;  
STANDING.**

*Actions for declaratory judgment, see DECLARATORY JUDGMENT.*

**1. IN GENERAL.**

- 665. In general.
- 666. Bringing actions in one's own right.
- 667. Third-party standing in general.
- 668. Requirement that rights be affected.
- 669. — In general.
- 670. — Direct effect on rights.



**92. CONSTITUTIONAL LAW****VI. ENFORCEMENT OF CONSTITUTIONAL PROVISIONS.(Cont'd)**

- 671. — Adverse effect on rights.
- 672. Requirement that complainant be injured.
- 673. Requirement that complainant be aggrieved.
- 674. Requirement of prejudicial impact on complainant.
- 675. Zone of interest.

**2. PARTICULAR CLASSES OF PERSONS.**

- 680. In general.
- 681. Citizens.
- 682. Residents and non-residents.
- 683. Taxpayers.
- 684. Property owners.
- 685. Voters.
- 686. Aliens.
- 687. Associations and organizations.
- 688. Governmental entities.
- 689. Public employees and officials.

**3. PARTICULAR QUESTIONS OR GROUNDS OF ATTACK IN GENERAL.**

- 695. In general.
- 696. Abortion and birth control.
- 697. Carriers.
- 698. Criminal law.
- 699. — In general.
- 700. — Sentencing and punishment.
- 701. — Prisons.
- 702. Education.
- 703. Elections.
- 704. Family law; marriage.
- 705. Government property in general.
- 706. Juvenile justice.
- 707. Labor and employment.
- 708. — In general.
- 709. — Public employment in general.
- 710. — Educational institutions.
- 711. — Prevailing wage laws.
- 712. — Workers' compensation.
- 713. Licenses.
- 714. — In general.
- 715. — Occupation, employment, and profession.
- 716. — Motor vehicles.
- 717. Public utilities.
- 718. Taxation.

**VI. ENFORCEMENT OF CONSTITUTIONAL PROVISIONS.(Cont'd)**

- 719. Weapons.
- 720. Zoning and land use.

**4. PARTICULAR CONSTITUTIONAL PROVISIONS IN GENERAL.**

- 725. In general.
- 726. Discrimination in general.
- 727. Right to privacy.
- 728. Freedom of association.
- 729. Fifteenth Amendment.
- 730. Obligation of contract.
- 731. Privileges and immunities.
- 732. Separation of powers.

**5. VAGUENESS IN GENERAL.**

- 735. In general.
- 736. Abortion and birth control.
- 737. Carriers.
- 738. Criminal law.
- 739. — In general.
- 740. — Sentencing and punishment.
- 741. — Prisons.
- 742. Education.
- 743. Elections.
- 744. Family law; marriage.
- 745. Juvenile justice.
- 746. Labor and employment.
- 747. — In general.
- 748. — Public employment in general.
- 751. — Workers' compensation.
- 752. Licenses.
- 753. — In general.
- 754. — Occupation, employment, and profession.
- 755. — Motor vehicles.
- 756. Public utilities.
- 757. Taxation.
- 758. Weapons.
- 759. Zoning and land use.

**6. OVERBREADTH IN GENERAL.**

- 765. In general.
- 766. Abortion and birth control.
- 768. Criminal law.
- 769. — In general.
- 770. — Sentencing and punishment.
- 771. — Prisons.



**92. CONSTITUTIONAL LAW****VI. ENFORCEMENT OF CONSTITUTIONAL PROVISIONS.(Cont'd)**

- 772. Education.
- 773. Elections.
- 774. Family law; marriage.
- 775. Juvenile justice.
- 776. Labor and employment.
- 777. — In general.
- 778. — Public employment in general.
- 782. Licenses.
- 783. — In general.
- 784. — Occupation, employment, and profession.
- 788. Weapons.
- 789. Zoning and land use.

**7. FIRST AMENDMENT IN GENERAL.**

- 795. In general.
- 796. Abortion and birth control.
- 797. Carriers.
- 798. Criminal law.
- 799. — In general.
- 800. — Sentencing and punishment.
- 801. — Prisons.
- 802. Education.
- 803. Elections.
- 804. Family law; marriage.
- 805. Government property in general.
- 806. Juvenile justice.
- 807. Labor and employment.
- 808. — In general.
- 809. — Public employment in general.
- 810. — Educational institutions.
- 813. Licenses.
- 814. — In general.
- 815. — Occupation, employment, and profession.
- 816. — Motor vehicles.
- 818. Taxation.
- 819. Weapons.
- 820. Zoning and land use.

**8. FREEDOM OF RELIGION AND CONSCIENCE.**

- 825. In general.
- 826. Abortion and birth control.
- 827. Carriers.
- 828. Criminal law.
- 829. — In general.
- 830. — Sentencing and punishment.

**VI. ENFORCEMENT OF CONSTITUTIONAL PROVISIONS.(Cont'd)**

- 831. — Prisons.
- 832. Education.
- 834. Family law; marriage.
- 835. Government property and symbols in general.
- 836. Juvenile justice.
- 837. Labor and employment.
- 838. — In general.
- 839. — Public employment in general.
- 840. — Educational institutions.
- 843. Licenses.
- 844. — In general.
- 845. — Occupation, employment, and profession.
- 847. Public utilities.
- 848. Taxation.
- 850. Zoning and land use.

**9. FREEDOM OF SPEECH, EXPRESSION, AND PRESS.**

- 855. In general.
- 856. Abortion and birth control.
- 857. Carriers.
- 858. Criminal law.
- 859. — In general.
- 860. — Sentencing and punishment.
- 861. — Prisons.
- 862. Education.
- 863. Elections.
- 864. Family law; marriage.
- 865. Government property in general.
- 866. Juvenile justice.
- 867. Labor and employment.
- 868. — In general.
- 869. — Public employment in general.
- 870. — Educational institutions.
- 873. Licenses.
- 874. — In general.
- 875. — Occupation, employment, and profession.
- 876. — Motor vehicles.
- 877. Public utilities.
- 878. Taxation.
- 879. Weapons.
- 880. Zoning and land use.

**10. DUE PROCESS.**

- 885. In general.

**92. CONSTITUTIONAL LAW****VI. ENFORCEMENT OF CONSTITUTIONAL PROVISIONS.(Cont'd)**

- 886. Abortion and birth control.
- 887. Carriers.
- 888. Criminal law.
- 889. — In general.
- 890. — Sentencing and punishment.
- 891. — Prisons.
- 892. Education.
- 893. Elections.
- 894. Family law; marriage.
- 895. Juvenile justice.
- 896. Labor and employment.
- 897. — In general.
- 898. — Public employment in general.
- 899. — Educational institutions.
- 900. — Prevailing wage laws.
- 901. — Workers' compensation.
- 902. Licenses.
- 903. — In general.
- 904. — Occupation, employment, and profession.
- 905. — Motor vehicles.
- 906. Public utilities.
- 907. Taxation.
- 908. Weapons.
- 909. Zoning and land use.

**11. EQUAL PROTECTION.**

- 915. In general.
- 916. Abortion and birth control.
- 917. Carriers.
- 918. Criminal law.
- 919. — In general.
- 920. — Sentencing and punishment.
- 921. — Prisons.
- 922. Education.
- 923. Elections.
- 924. Family law; marriage.
- 925. Government contracts.
- 926. Juvenile justice.
- 927. Labor and employment.
- 928. — In general.
- 929. — Public employment in general.
- 930. — School and college employees.
- 931. — Prevailing wage laws.
- 932. — Workers' compensation.
- 933. Licenses.
- 934. — In general.

**VI. ENFORCEMENT OF CONSTITUTIONAL PROVISIONS.(Cont'd)**

- 935. — Occupation, employment, and profession.
- 936. — Motor vehicles.
- 937. Public utilities.
- 938. Taxation.
- 939. Weapons.
- 940. Zoning and land use.

**(B) ESTOPPEL, WAIVER, OR FORFEITURE.**

- 945. In general.
- 946. Estoppel in general.
- 947. Waiver in general.
- 948. Contractual waiver.
- 949. Failure to plead issue.
- 950. Presumptions regarding estoppel or waiver.
- 951. Reliance on statute or availment of statutory benefits.
- 952. Wrongful conduct of complainant.
- 953. Delay in assertion of rights; laches.

**(C) DETERMINATION OF CONSTITUTIONAL QUESTIONS.****1. IN GENERAL.**

- 955. In general.
- 956. Right to challenge constitutionality at any time.
- 957. Notice to Attorney General.
- 958. — In general.
- 959. — Waiver of issue due to lack of notice.
- 960. Judicial authority and duty in general.
- 961. — In general.
- 962. — Sua sponte consideration of constitutionality.
- 963. Questions of law or fact.
- 964. Form and sufficiency of objection, allegation, or pleading.
- 965. — In general.
- 966. — Pleading.
- 967. — Particular claims.
- 968. Proceedings in which question is raised.
- 969. Scope of inquiry in general.

**2. NECESSITY OF DETERMINATION.**

*Actions for declaratory judgment, see DECLARATORY JUDGMENT.*

- 975. In general.

**92. CONSTITUTIONAL LAW****VI. ENFORCEMENT OF CONSTITUTIONAL PROVISIONS.(Cont'd)**

- 976. Resolution of non-constitutional questions before constitutional questions.
- 977. Mootness.
- 978. Ripeness; prematurity.
- 979. Justiciability.
- 980. Case or controversy requirement.
- 981. Hypothetical questions.
- 982. Abstract questions.
- 983. Exhaustion of other remedies.
- 984. Examination of state constitution before federal constitution.

**3. PRESUMPTIONS AND CONSTRUCTION AS TO CONSTITUTIONALITY.**

- 990. In general.
- 991. Facial challenges.
- 992. "As applied" challenges.
- 993. Initiative measures.
- 994. Avoidance of constitutional questions.
- 995. Plainly unconstitutional.
- 996. Clearly, positively, or unmistakably unconstitutional.
- 997. Consideration of limiting construction.
- 998. Intent of and considerations influencing legislature.
- 999. — In general.
- 1000. — Investigation and fact-finding.
- 1001. Doubt.
- 1002. — In general.
- 1003. — Avoidance of doubt.
- 1004. — Proof beyond a reasonable doubt.
- 1005. Debatable questions.
- 1006. Particular issues and applications.
- 1007. — In general.
- 1008. — Penal statutes.
- 1009. — Economic legislation.
- 1010. — Social legislation.
- 1011. — Police power; health and safety.
- 1012. — Taxation and revenue legislation.
- 1013. — Vagueness in general.
- 1014. — Overbreadth in general.
- 1015. — Obligation of contract.
- 1016. — First Amendment in general.
- 1017. — Freedom of religion and conscience.
- 1018. — Freedom of speech, expression, and press.
- 1019. — Privileges and immunities.

**VI. ENFORCEMENT OF CONSTITUTIONAL PROVISIONS.(Cont'd)**

- 1020. — Classification or discrimination in general.
- 1021. — Equal protection.
- 1022. — Due process.
- 1023. — Bills of attainder.
- 1024. Limitations of rules and special circumstances affecting them.
- 1025. — In general.
- 1026. — Rewriting to save from unconstitutionality.
- 1027. — Disappearance of presumption of constitutionality.

**4. BURDEN OF PROOF.**

- 1030. In general.
- 1031. Negating reasonable basis.
- 1032. Particular issues and applications.
- 1033. — In general.
- 1034. — Vagueness in general.
- 1035. — Overbreadth in general.
- 1036. — First Amendment in general.
- 1037. — Freedom of religion and conscience.
- 1038. — Freedom of speech, expression, and press.
- 1039. — Due process.
- 1040. — Equal protection.

**5. EFFECT OF DETERMINATION.**

- 1045. In general.
- 1046. Severability.
- 1047. Recall of decision by popular vote.

**VII. CONSTITUTIONAL RIGHTS IN GENERAL.****(A) IN GENERAL.**

- 1050. In general.
- 1051. Violation of statute or regulation as constitutional violation.
- 1052. Fundamental rights.
- 1053. Strict or heightened scrutiny; compelling interest.
- 1054. Intermediate scrutiny.
- 1055. Reasonableness or rationality.
- 1056. Arbitrariness.  
*Constitutional provisions prohibiting exercise of arbitrary power, see ¶1068.*
- 1057. Doctrine of unconstitutional conditions.

## 92. CONSTITUTIONAL LAW

VII. CONSTITUTIONAL RIGHTS  
IN GENERAL.(Cont'd)

- 1058. Denial of benefits as constitutional violation.
- 1059. Chilling exercise of constitutional rights.
- 1060. Retaliation for exercise of constitutional rights.
- 1061. Applicability to governmental or private action; state action.
- 1062. Children and minors, rights of.
- 1063. Aliens, rights of.  
*See also ALIENS, IMMIGRATION, AND CITIZENSHIP.*

## (B) PARTICULAR CONSTITUTIONAL RIGHTS.

- 1065. In general.
- 1067. Bill of Rights or Declaration of Rights.
- 1068. Arbitrary power.
- 1069. Government property or facilities, use of.
- 1070. Ninth Amendment.
- 1071. — In general.
- 1072. — Weapons.
- 1073. Fourteenth Amendment in general.  
*Due process, see XXVII. Equal protection, see XXVI. Privileges and immunities, see XXIV(B). Enforcement of Fourteenth Amendment, see XXVIII.*
- 1074. Right to education.  
*See also EDUCATION.*
- 1075. — In general.
- 1076. — Fundamental nature of right.
- 1077. — School financing.
- 1078. Academic freedom.  
*First Amendment right of academic freedom, see ¶1191.*
- 1079. Personal liberty.  
*Due process liberty interests, see XXVII.*
- 1080. Personal security.
- 1081. Dignity.
- 1082. Reputation.
- 1083. Governmental duty to protect citizens.
- 1084. Safety.
- 1085. Life in general.  
*Abortion, see also ABORTION AND BIRTH CONTROL.*
- 1086. Bodily integrity.
- 1087. Right to die.  
*See also HEALTH ¶913.*
- 1088. Suicide.  
*See also HEALTH ¶913 and SUICIDE.*
- 1089. Bodily restraint.

VII. CONSTITUTIONAL RIGHTS  
IN GENERAL.(Cont'd)

- 1090. Personal appearance and grooming; hair.
- 1091. — In general.
- 1092. — Public employees and officials.
- 1093. Family and family law in general.
- 1094. Sex and procreation.
- 1095. Bills of attainder; bills of pains and penalties.
- 1096. — In general.
- 1097. — Punishment requirement in general.
- 1098. — Specificity requirement in general.
- 1099. — Affiliation with political party or holding of political belief, in general.
- 1100. — Particular issues and applications.
  - (1). In general.
  - (2). Criminal proceedings in general.
  - (3). Sentencing and punishment; imprisonment.
  - (4). Probation and parole.
  - (5). Sex offenders.
  - (6). Public employees and officials.
  - (7). Weapons, possession of.
  - (8). Zoning and land use.
  - (9). Aliens and immigration.
- 1106. Imprisonment for debt.  
*Thirteenth Amendment issues, see HUMAN TRAFFICKING AND SLAVERY.*
- 1107. Pursuit of happiness.
- 1108. Right to property.  
*Due process property interests, see XXVII.*
- 1109. — In general.
- 1110. — Rationality in general; reasonableness in general.
- 1111. — Relationship to police power or public welfare in general.
- 1112. — Particular issues and applications.
  - (1). In general.
  - (2). Nuisances.
  - (3). Intoxicating liquors.
- 1113. Liberty to choose occupation, pursue livelihood, or enjoy fruits of labor.  
*Due process rights, see XXVII.*
- 1114. — In general.
- 1115. — Rationality in general; reasonableness in general.
- 1116. — Relationship to police power or public welfare in general.

**92. CONSTITUTIONAL LAW****VII. CONSTITUTIONAL RIGHTS  
IN GENERAL.**(Cont'd)

1117. — Particular issues and applications.  
     (1). In general.  
     (2). Health care professionals.
1118. Freedom of contract; liberty of contract.  
     *Due process rights, see XXVII.*
1119. — In general.
1120. — Exercise of police power in general; public interest or welfare in general.
1121. — Particular issues and applications.  
     (1). In general.  
     (2). Construction contracts.  
     (3). Labor and employment; wages.
1122. Quartering of soldiers.
1123. Corruption of blood; forfeiture of estate.
1124. Freedom of thought.  
     *Freedom of religion and conscience, see XIII. Freedom of speech, expression, and press, see XXVIII.*

**VIII. VAGUENESS IN GENERAL.**

*Due process vagueness doctrine, see XXVII. First Amendment vagueness doctrine, see X. Free speech vagueness doctrine, see XVIII.*

1130. In general.
- 1130.1. Rules and regulations in general.
- 1130.2. — In general.
- 1130.3. — Administrative rules and regulations.
- 1130.4. — Rules of court.
- 1130.5. Statutes in general.
- 1130.6. Ordinances in general.
- 1130.7. Vagueness as to covered conduct or standards of enforcement; offenses and penalties.
- 1130.8. — In general.
- 1130.9. — Rules and regulations.
- 1130.10. — Statutes.
- 1130.11. — Ordinances.
1131. Vagueness on face or as applied.
1132. Particular issues and applications.  
     (1). In general.  
     (2). Property.  
     (3). — In general.  
     (4). — Landlord and tenant.  
     (5). — Zoning, planning, and land use.  
     (6). Water.

**VIII. VAGUENESS IN GENERAL.**(Cont'd)

- (7). Governments and political subdivisions.
- (8). Social security, public assistance, and other government payments.
- (9). Taxation.
- (10). Labor and employment.
- (11). Workers' compensation.
- (12). Public employees and officials.
- (13). Education.
- (14). Elections, voting, and political rights.
- (15). War, national emergency, and national security.
- (16). — In general.
- (17). — Terrorism.
- (18). Trade or business.
- (19). — In general.
- (20). — Licenses, permits, and certifications in general.
- (21). — Attorneys.
- (22). — Health care professionals.
- (23). — Insurance.
- (24). — Investment, finance, and credit.
- (25). — Securities and commodities regulation.
- (26). — Intoxicating liquors.
- (27). — Public amusements, gaming, and lotteries.
- (28). Intellectual property.
- (29). Animals and plants, regulation of.
- (30). Environment and health.
- (31). Mental health.
- (32). — In general.
- (33). — Sexually dangerous persons; sex offenders.
- (34). — Chemical dependency.
- (35). Motor vehicles.
- (36). Carriers and public utilities.
- (37). — In general.
- (38). — Railroads.
- (39). — Telecommunications.
- (40). Families and children.
- (41). Aliens, immigration, and citizenship.
- (42). Corporations and other organizations.

**92. CONSTITUTIONAL LAW****VIII. VAGUENESS IN GENERAL.**(Cont'd)

- (43). Sexual matters.
- (44). — In general.
- (45). — Abortion, contraception, and birth control.
- (46). — Sexually oriented businesses.
- (47). Criminal justice.
- (48). — In general.
- (49). — Particular offenses in general.
- (50). — Sex offenses.
- (51). — Offenses against children.
- (52). — Sex offenses against children.
- (53). — Conspiracy, racketeering, and money laundering.
- (54). — Disorderly conduct and breach of the peace.
- (55). — Drugs; controlled substances.
- (56). — Extortion, threats, stalking, and harassment.
- (57). — False pretenses and fraud.
- (58). — Kidnapping.
- (59). — Obstructing justice, bribery, and perjury.
- (60). — Sentencing and punishment in general.
- (61). — Capital punishment.
- (62). — Prisons and jails.
- (63). — Pardon and parole.
- (64). Juvenile justice.
- (65). Weapons and explosives.
- (66). Contempt.
- (67). Noise regulation.

**IX. OVERBREADTH IN GENERAL.**

*Due process overbreadth doctrine, see XXVII. First Amendment overbreadth doctrine, see X. Free speech overbreadth doctrine, see XVIII.*

- 1140. In general.
- 1140.1. Rules and regulations in general.
- 1140.2. Statutes in general.
- 1140.3. Ordinances in general.
- 1141. Substantial impact, necessity of.
- 1142. Use as last resort; sparing use.
- 1143. Particular issues and applications.
  - (1). In general.
  - (2). Zoning, planning, and land use.

**IX. OVERBREADTH IN GENERAL.**(Cont'd)

- (3). Public employees and officials.
- (4). Education.
- (5). Elections, voting, and political rights.
- (6). War, national emergency, and national security.
- (7). Trade or business.
- (8). Mental health.
- (9). Motor vehicles.
- (10). Families and children.
- (11). Sexual matters.
- (12). — In general.
- (13). — Abortion, contraception, and birth control.
- (14). — Sexually oriented businesses.
- (15). Criminal justice.
- (16). — In general.
- (17). — Particular offenses in general.
- (18). — Sex offenses.
- (19). — Offenses against children.
- (20). — Sex offenses against children.
- (21). — Disorderly conduct and breach of the peace.
- (22). — Drugs; controlled substances.
- (23). — Extortion, threats, stalking, and harassment.
- (24). — Sentencing and punishment in general.
- (25). — Capital punishment.
- (26). Weapons and explosives.

**X. FIRST AMENDMENT IN GENERAL.**

*See later divisions for particular First Amendment rights, such as freedom of religion, freedom of speech, etc.*

**(A) IN GENERAL.**

- 1150. In general.
- 1151. Applicability to governmental or private action; state action.
- 1152. Facial challenges.
- 1153. As applied challenges.
- 1154. Absolute nature of rights.
- 1155. Chilling effect on rights.

**92. CONSTITUTIONAL LAW****X. FIRST AMENDMENT IN GENERAL.**(Cont'd)

- 1156. Strict or heightened scrutiny; compelling state interest.
- 1157. Intermediate scrutiny.
- 1158. Narrowing, requirement of.
- 1159. Vagueness in general.  
*Vagueness doctrine in general, see also VIII.*
- 1160. — In general.
- 1161. — Vagueness in all applications, necessity of.
- 1162. Overbreadth in general.  
*Overbreadth doctrine in general, see also IX.*
- 1163. — In general.
- 1164. — Substantial impact, necessity of.
- 1165. — Use as last resort; sparing use.

**(B) PARTICULAR ISSUES AND APPLICATIONS.**

- 1170. In general.
- 1171. Retaliation in general.
- 1172. Sex in general.
- 1173. — In general.
- 1174. — Obscenity in general.
- 1175. — Pornography.
- 1176. — Sexually oriented businesses.
- 1177. Family law; marriage.
- 1178. Government property or facilities.
- 1179. Private property.
- 1180. Public employees and officials.
- 1181. — In general.
- 1182. — Forfeiture or relinquishment of rights.
- 1183. — Discharge in general.
- 1184. — Retaliation.
  - (1). In general.
  - (2). Transfer.
  - (3). Discharge; constructive discharge.
- 1185. Judges.
- 1186. Armed services; National Guard.
- 1187. Education.
- 1188. — In general.
- 1189. — Students.
  - (1). In general.
  - (2). Discipline.
- 1190. — Employees.
  - (1). In general.
  - (2). Retaliation.
- 1191. — Academic freedom.  
*Constitutional right to academic freedom, in general, see ¶1078.*
- 1192. Government contractors.

**X. FIRST AMENDMENT IN GENERAL.**(Cont'd)

- 1193. Prisons.
- 1194. — In general.
- 1195. — Reasonableness.
- 1196. — Retaliation.
- 1197. Pretrial detention.
- 1198. Health care decisions.
- 1199. — In general.
- 1200. — Right to refuse treatment.
- 1202. Zoning and land use.
- 1203. Access to courts in general.  
*Right to petition for redress of grievances, see XV. Constitutional right of access to courts, in general, see XIX.*
- 1204. — In general.
- 1205. — Prisoners.

**XI. RIGHT TO PRIVACY.**

*Tort claim for invasion of privacy, see TORTS. Privacy interests implicated in searches and seizures, see SEARCHES AND SEIZURES. Associational privacy, see XVI. Political rights and discrimination, see XVII. Abortion and birth control, see also ABORTION AND BIRTH CONTROL.*

**(A) IN GENERAL.**

- 1210. In general.
- 1211. Relation between state and federal rights.
- 1212. Disclosure of personal matters.
- 1213. Making of personal decisions.
- 1214. Absolute, inviolable, or unlimited nature.
- 1215. Reasonable, justifiable, or legitimate expectation.
- 1216. Rational or reasonable basis.
- 1217. Compelling interest.
- 1218. Applicability to governmental or private action; state action.

**(B) PARTICULAR ISSUES AND APPLICATIONS.**

- 1225. In general.
- 1226. Children and minors in general.
- 1227. Records or information.
- 1228. — In general.
- 1229. — Discovery.
- 1230. — Public records or information.
- 1231. — Medical records or information.
- 1232. — Mental health records or information.
- 1233. — Social security numbers.
- 1234. — Drivers' licenses.

**92. CONSTITUTIONAL LAW****XI. RIGHT TO PRIVACY.(Cont'd)**

- 1235. — Taxation.
- 1236. — Telecommunications.
- 1237. Sex and procreation.
- 1238. — In general.
- 1239. — Birth control.
- 1240. — Abortion.
- 1241. — Sodomy; sexual orientation.
- 1242. — Obscenity in general.
- 1243. — Pornography.
- 1244. — Sexually oriented businesses.
- 1245. — Sex offenders.
- 1246. — Prostitution and solicitation.
- 1247. Family law; marriage.
- 1248. — In general.
- 1249. — Parental rights.
- 1250. — Child custody and visitation.
- 1251. — Sexual orientation.
- 1252. Public employees and officials.
- 1253. — In general.
- 1254. — Personnel files and records.
- 1255. — Financial information.
- 1256. — Drug and alcohol tests.
- 1257. — Polygraph examinations.
- 1258. — Sex; dating relationships.
- 1259. Armed services; National Guard.
- 1260. — In general.
- 1261. — Sexual activity.
- 1262. Education.
- 1263. — In general.
- 1264. — Students.
  - (1). In general.
  - (2). Personal information.
- 1265. — Parents of students.
- 1266. — Employees.
- 1267. Government contractors.
- 1268. Health care decisions.
  - Medical records or information, see ¶1231.*
- 1269. — In general.
- 1270. — Right to refuse treatment or medication.
- 1271. — Refusal to give specimens.
- 1272. — Right to die or commit suicide.
- 1273. Controlled substances.
- 1274. Prisons.
- 1275. Pretrial detention.

**XII. FREEDOM OF TRAVEL AND MOVEMENT.**

- 1280. In general.

**XII. FREEDOM OF TRAVEL AND MOVEMENT.(Cont'd)**

- 1281. Compelling interest test.
- 1282. Residency requirements.
- 1283. Intrastate travel.
- 1284. International travel.
- 1285. Public employees.
- 1286. Child custody and visitation.
- 1287. Public welfare benefits.
- 1288. Sex offenders.

**XIII. FREEDOM OF RELIGION AND CONSCIENCE.****(A) IN GENERAL.**

- 1290. In general.
- 1291. Neutrality.
- 1292. Beliefs protected; inquiry into beliefs.
- 1293. Aiding, funding, financing, or subsidization of religion.
  - Particular issues and applications, see ¶1312 et seq.*
- 1294. Establishment of religion.
- 1295. — In general.
- 1296. — Secular purpose.
- 1297. — Neutrality.
- 1298. — Advancement, endorsement, or sponsorship of religion; favoring or preferring religion.
- 1299. — Inhibiting, interfering with, or coercing religion.
- 1300. — Entanglement.
- 1301. — Aiding, funding, financing, or subsidization of religion.
- 1302. Free exercise of religion.
- 1303. — In general.
- 1304. — Freedom to believe.
- 1305. — Beliefs protected; inquiry into beliefs.
- 1306. — Burden on religion.
- 1307. — Neutrality; general applicability.
- 1308. — Strict scrutiny; compelling interest.

**(B) PARTICULAR ISSUES AND APPLICATIONS.**

- 1310. In general.
- 1311. Indians in general.
- 1312. Aiding, funding, financing, or subsidization of religion.
  - General propositions, see ¶1293 and 1301. Religious organizations, aid to, see ¶1334. Private schools, aid to, see ¶1362.*
- 1313. Government meetings and proceedings.



**92. CONSTITUTIONAL LAW****XIII. FREEDOM OF RELIGION AND  
CONSCIENCE.(Cont'd)**

- 1314. — In general.
- 1315. — Legislature.
- 1316. — Local governmental entities.
- 1317. — Courts.
- 1318. Government seals, insignia, emblems, logos, or mottos.
- 1319. Labor and employment.
- 1320. — In general.
- 1321. — Discrimination.
- 1322. Public officials; judges.
- 1323. Public employment.
- 1324. Armed services; selective service.
- 1325. — In general.
- 1326. — Conscientious objectors.
- 1327. Religious organizations in general.
- 1328. — In general.
- 1329. — Ecclesiastical matters.
- 1330. — Matters of faith and doctrine.
- 1331. — Internal affairs, governance, or administration; autonomy or polity.
- 1332. — Neutrality.
- 1333. — Entanglement.
- 1334. — Governmental aid, funding, financing, or subsidization.
- 1335. — Discipline.
- 1336. — Membership.
  - (1). In general.
  - (2). Discipline; expulsion.
- 1337. — Tort claims by members against organization or other members.
- 1338. — Property.
- 1339. — Labor and employment in general.
  - (1). In general.
  - (2). Discrimination.
- 1340. — Clergy; ministers.
  - (1). In general.
  - (2). Ministerial exception in general.
  - (3). Employment discrimination.
  - (4). Sexual misconduct by clergy.
- 1341. Public education.
- 1342. — In general.
- 1343. — Students in general.
- 1344. — Employees in general.
- 1345. — Use of school facilities.
  - (1). In general.
  - (2). Access by outside organizations.

**XIII. FREEDOM OF RELIGION AND  
CONSCIENCE.(Cont'd)**

- 1346. — Plaques, dedications, or memorials.
- 1347. — Student organizations.
- 1348. — Distribution of literature or other religious items.
- 1349. — Religious, holiday, or seasonal displays or depictions.
- 1350. — Prayer or silence in general.
- 1351. — Graduation or baccalaureate ceremonies.
- 1352. — Pledge of Allegiance.
- 1353. — Flag salutes.
- 1354. — Curriculum, books, and classroom materials.
  - (1). In general.
  - (2). Evolution, creationism, or intelligent design.
  - (3). Bible.
  - (4). Health or sex education.
- 1355. — Presentations by students or visitors; student reports.
- 1356. — Immunization requirements.
- 1357. — Dress and grooming requirements.
- 1358. — Board meetings and membership.
- 1359. — Cooperation or coordination with private education.
- 1360. Charter schools.
- 1361. Home schooling.
- 1362. Private education.
- 1363. — In general.
- 1364. — Tuition; vouchers.
  - (1). In general.
  - (2). Tax deductions or credits.
- 1365. — Textbooks and classroom materials.
- 1366. — Equipment.
- 1367. — Transportation.
- 1368. — Employees.
  - (1). In general.
  - (2). Compensation.
- 1369. — School facilities.
- 1370. Post-secondary institutions.
- 1371. — In general.
- 1372. — Employees.
- 1373. Government property.  
*Public schools, see ¶1341.*
- 1374. — In general.

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XIII. FREEDOM OF RELIGION AND  
CONSCIENCE.(Cont'd)

- 1375. — Parks and forests in general.
- 1376. — Displays in general.
- 1377. — Holiday and seasonal displays.
- 1378. — Nativity scenes; creches.
- 1379. — Monuments and statuary.
- 1380. — Religious texts in general.
- 1381. — Ten Commandments.
- 1382. — Sale or transfer of property.
- 1383. Cemeteries and burial grounds.
- 1384. Taxation.
- 1385. — In general.
- 1386. — Religious organizations or educational institutions.
  - (1). In general.
  - (2). Exemptions.
- 1387. Sundays and other days of observance.
- 1388. Holidays.
- 1389. Solicitation; distribution of literature.  
*Public schools, see ¶1348. Licenses, see ¶1390.*
- 1390. Licenses.
- 1391. — In general.
- 1392. — Drivers' licenses.
- 1393. — Intoxicating liquors.
- 1394. Health care.
- 1395. — In general.
- 1396. — Abortion and birth control.
- 1397. — Refusal of medical treatment.  
*Public school immunization requirements, see ¶1356.*
- 1398. — Facilities.
  - (1). In general.
  - (2). Chaplains.
- 1399. — Mental health.
- 1400. Zoning and land use.
- 1401. — In general.
- 1402. — Religious organizations.
- 1403. — Permits and variances.
- 1404. Family law.
- 1405. — In general.
- 1406. — Marriage; bigamy.
- 1407. — Divorce and dissolution.
- 1408. — Parental rights in general.
- 1409. — Child custody, visitation, and support.
- 1410. — Adoption.
- 1411. Bankruptcy.
- 1412. Protests.
- 1413. Criminal law.

XIII. FREEDOM OF RELIGION AND  
CONSCIENCE.(Cont'd)

- 1414. — In general.
- 1415. — Proceedings.
- 1416. — Sentencing and punishment.
- 1417. — Probation.
- 1418. — Parole.
- 1419. Controlled substances.
- 1420. Jury.
- 1421. Prisons and pretrial detention.
- 1422. — In general.
- 1423. — Indians in general.
- 1424. — Hair and grooming.
- 1425. — Diet; meals.
- 1426. — Rehabilitation and treatment programs.
- 1427. — Religious services and ceremonies; study and prayer groups.
- 1428. Juvenile justice.

## XIV. RIGHT OF ASSEMBLY.

*Freedom of association, see XVI. Political rights and discrimination, see XVII.*

- 1430. In general.
- 1431. Government property.

XV. RIGHT TO PETITION FOR REDRESS  
OF GRIEVANCES.

*Political rights and discrimination, see XVII.*

- 1435. In general.
- 1436. Retaliation in general.
- 1437. Noerr-Pennington doctrine.
  - (1). In general.
  - (2). Antitrust.  
*See also ANTITRUST AND TRADE REGULATION ¶905.*
- 1438. Prisoners.

## XVI. FREEDOM OF ASSOCIATION.

*Political rights and discrimination, see XVII.*

- 1440. In general.
- 1441. Expressive association.
- 1442. Intimate association; dating relationships in general.
- 1443. Familial association.
- 1444. Sexual association.
- 1445. Associational privacy.
- 1446. Public employees and officials.
- 1447. Education in general.
- 1448. Post-secondary institutions.

**92. CONSTITUTIONAL LAW****XVI. FREEDOM OF ASSOCIATION.**(Cont'd)

- 1449. Labor organizations; collective bargaining.
- 1450. Government property or facilities, use of.
- 1451. Prisons and pretrial detention.
- 1452. — In general.
- 1453. — Visitors.
- 1454. Discovery requests and subpoenas.

**XVII. POLITICAL RIGHTS AND DISCRIMINATION.**

*See also ELECTION LAW.*

- 1460. In general.
- 1461. Elections in general.
- 1462. Initiative and referendum; direct democracy.
- 1463. Political action committees.
- 1464. Right to run for public office in general; candidacy.
- 1465. Political parties in general.
- 1466. Voting rights and suffrage in general.
- 1467. Ballots and ballot access.
- 1468. Nominations; primary elections.
- 1469. Campaign finance, contributions, and expenditures.
- 1470. Right to instruct representatives.
- 1471. Public employees and officials.
- 1472. — In general.
- 1473. — Right to run for public office; candidacy.
- 1474. — Political beliefs or discrimination in general.
  - (1). In general.
  - (2). Adverse action.
  - (3). Discharge.
- 1475. — Political affiliation; patronage.
  - (1). In general.
  - (2). Ministerial, subordinate, or low-level employees in general.
  - (3). Confidential, policy-making, sensitive, or trust employees in general.
  - (4). Appointment and hiring; qualifications.
  - (5). Adverse action in general.
  - (6). Working environment and duties; transfer and reassignment.
  - (7). Promotion.
  - (8). Demotion.

**XVII. POLITICAL RIGHTS AND DISCRIMINATION.**(Cont'd)

- (9). Discharge.
- (10). Employees of United States territories.
- 1476. Term limits.
- 1477. Judges.
- 1478. Education.
- 1479. Government contractors.
- 1480. Redistricting and reapportionment.
- 1481. Lobbying.
- 1482. Fifteenth Amendment.

**XVIII. FREEDOM OF SPEECH, EXPRESSION, AND PRESS.****(A) IN GENERAL.****1. IN GENERAL.**

- 1490. In general.
- 1491. Purpose of constitutional protection.
- 1492. What is “speech”.
- 1493. Relation between state and federal rights.
- 1494. Applicability to governmental or private action; state action.
- 1495. Entities protected.
- 1496. Facial challenges; facial invalidity.
- 1497. Conduct, protection of.
- 1498. Absolute nature of right.
- 1499. Censorship.
- 1500. Advocacy.
- 1501. Denial of benefits.
- 1502. Receipt of information or ideas; listeners’ rights.  
*Heckler’s veto, see ¶1552.*
- 1503. Right to refrain from speaking.
- 1504. Exercise of police power; relationship to governmental interest or public welfare.
- 1505. Narrow tailoring.
- 1506. Strict or exacting scrutiny; compelling interest test.
- 1507. Viewpoint or idea discrimination.
- 1508. Time, place, or manner restrictions.
- 1509. — In general.
- 1510. — Reasonableness.
- 1511. Content-neutral regulations or restrictions.
- 1512. — In general.

## 92. CONSTITUTIONAL LAW

**XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 1513. — Governmental disagreement with message conveyed.
- 1514. — Narrow tailoring requirement; relationship to governmental interest.
- 1515. — Existence of other channels of expression.
- 1516. Content-based regulations or restrictions.
- 1517. — In general.
- 1518. — Strict or exacting scrutiny; compelling interest test.
- 1519. Overbreadth.
- 1520. — In general.
- 1521. — Prohibition of substantial amount of speech.
- 1522. — Invalidation of all enforcement.
- 1523. — Limiting construction.
- 1524. Vagueness.
- 1525. Prior restraints.
- 1526. — In general.
- 1527. — Presumption of invalidity.
- 1528. — Time limits on decision-making.
- 1529. Clear and present danger test.  
*Incitement or encouragement of crime or lawless action, see ¶1801.*

**2. COMMERCIAL SPEECH IN GENERAL.**

- 1535. In general.
- 1536. What is “commercial speech”.
- 1537. Difference in protection given to other speech.
- 1538. Overbreadth.
- 1539. False, untruthful, deceptive, or misleading speech.
- 1540. Unlawful speech or activities.
- 1541. Reasonableness; relationship to governmental interest.

**3. PARTICULAR ISSUES AND APPLICATIONS  
IN GENERAL.**

- 1545. In general.
- 1546. Children and minors.  
*Family law issues, such as child custody, child support, and termination of parental rights, see ¶1585.*
- 1547. — In general.
- 1548. — Rights of.
- 1549. — Protection of.
- 1550. Criticism of government or officials.
- 1551. Right to gather information.

**XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 1552. Heckler’s veto.
- 1553. Retaliation.
- 1554. Injunctions and restraining orders.
- 1555. Matters of public concern.
- 1556. Matters of private concern.
- 1557. Injurious speech.
- 1558. Violence.  
*Criminal offenses, see XVIII(H).*
- 1559. Offensive, vulgar, abusive, or insulting speech.  
*Criminal offenses, see XVIII(H).*
- 1560. Hate speech.  
*Hate crimes, see ¶1815.*
- 1561. Profanity or swearing.  
*Criminal offenses, see XVIII(H).*
- 1562. “Fighting words”.  
*Criminal offenses, see XVIII(H).*
- 1563. Government-sponsored speech.
- 1564. Compelled or forced speech, support, or participation.
- 1565. Government contracts.  
*Employees of contractors, see ¶1924.*
- 1566. — In general.
- 1567. — Retaliation.
- 1568. Security clearances.
- 1569. Government information.
- 1570. Government records.  
*Court records, see XVIII(V).*
- 1571. Government funding.
- 1572. Taxation.  
*Taxation of press, see ¶2081. License taxes, see ¶1595.*
- 1573. Mail.  
*Postal property, see ¶1770. Prison mail, see ¶2283 et seq.*
- 1574. Religious speech or activities.  
*Distribution of materials, see ¶1879.*
- 1575. Books.  
*Bookstores, regulation of, see ¶1889.*
- 1576. Art.
- 1577. Photography and photographs.
- 1578. Parody.
- 1579. Humor.
- 1580. Symbolic speech.
- 1581. Anonymous speech.
- 1582. Curfews.
- 1583. Legal aid organizations.
- 1584. Aliens and immigration.
- 1585. Family law.
- 1586. Mental health.

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*Sex offenders, see* ¶1818.

**(B) LICENSES AND PERMITS IN GENERAL.**

- 1590. In general.
- 1591. Discretion in general.
- 1592. Prior restraints.
- 1593. Time limits for grant or denial.
- 1594. Availability of judicial review.
- 1595. Fees or taxes.
- 1596. License plates.

**(C) TRADE OR BUSINESS.**

- 1600. In general.
- 1601. Labels in general.
- 1602. Unfair trade practices.
- 1603. Copyrights.
- 1604. Trademarks and trade names.
- 1605. Securities regulation.
- 1606. Bail bonds.
- 1607. Accountants.
- 1608. Real estate brokers and agents.
- 1609. Insurance.
- 1610. Credit reporting agencies.
- 1611. Public utilities.
- 1612. Tobacco and cigarettes.  
*Smoking regulations, see* ¶1783.
- 1613. Intoxicating liquors.
- 1614. Health care professions.
- 1615. Agricultural product marketing and assessments.  
*Advertising, see* ¶1650.
- 1616. Import/export regulations.  
*Terrorist organizations, see* ¶1868.

**(D) FALSE STATEMENTS IN GENERAL.**

*Defamation, see* XVIII(X).

- 1620. In general.
- 1621. Opinion.
- 1622. — In general.
- 1623. — Particular issues and applications.
- 1624. Deception; misrepresentation.
- 1625. False reports against public employees and officials.
- 1626. Commercial disparagement.
- 1627. Invasion of privacy.
- 1628. Emotional distress.
- 1629. Tortious interference.
- 1630. Right of publicity; misappropriation of likeness, name, or celebrity status.  
*Advertising, see* ¶1652.

**(E) ADVERTISING AND SIGNS.****1. IN GENERAL.**

- 1635. In general.

**2. ADVERTISING.**

*Political or campaign advertising, see* ¶1709. *Advertising on government property, see* ¶1754 et seq.

- 1640. In general.
- 1641. False or deceptive claims; misrepresentation.
- 1642. Government advertisements.
- 1643. Broadcasting.
- 1644. Radio.
- 1645. Product advertisements.
- 1646. Business or professional services.
- 1647. Health care.
- 1648. Abortion and birth control.
- 1649. Intoxicating liquors.
- 1650. Agricultural product marketing and assessments.  
*See also* ¶1615.
- 1651. Gambling and gaming.
- 1652. Right of publicity; misappropriation of likeness, name, or celebrity status.  
*See also* ¶1630.

**3. SIGNS.**

*Political or campaign signs, see* ¶1710.

- 1655. In general.
- 1656. Difference in protection for commercial signs.
- 1657. Licenses and permits.
- 1658. Restrictions of number of signs.
- 1659. Size or height restrictions.
- 1660. Setback requirements.
- 1661. Residential signs.
- 1662. Off-premises signs.
- 1664. Temporary signs.
- 1665. Portable signs.
- 1666. Pole signs.  
*Utility poles, use of, see* ¶1785.

**4. FLAGS, BANNERS, AND PENNANTS.**

- 1670. In general.
- 1671. United States flag.  
*Flag desecration or disrespect, see* ¶1866.

**5. BILLBOARDS.**

- 1675. In general.
- 1676. Off-premises billboards.

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**XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

1677. Size or height restrictions.  
1678. Bans or moratoria.

**(F) POLITICS AND ELECTIONS.**

1680. In general.  
1681. Political speech, beliefs, or activity in general.  
1682. Tax-exempt organizations.  
1683. Petitions in general.  
1684. Literature and distribution thereof.  
1685. Disclosure requirements in general.  
1686. Candidates in general.  
1687. Political parties or organizations in general.  
1688. Elections, voting, or ballot access in general.  
1689. Nominations; primary elections.  
1690. Voter guides or pamphlets.  
1691. Voter registration.  
1692. Polling places.  
1693. Ballots.  
1694. Write-in voting.  
1695. Campaign finance in general.  
1696. Public funding.  
1697. Contributions.  
1698. — In general.  
1699. — Limitations on amounts.  
1700. — Corporate contributions.  
1701. — Reporting and disclosure.  
1702. Expenditures.  
1703. — In general.  
1704. — Limitations on amounts.  
1705. — Disclosure requirements.  
1706. — Independent expenditures in general.  
1707. — Corporate expenditures.  
1708. — Political parties, organizations, or committees; coordinated expenditures.  
1709. Advertisements.  
*Advertising by means of telecommunications device, see XVIII(W).*  
1710. Signs.  
1711. Initiatives.  
1712. — In general.  
1713. — Matters subject to initiative.  
1714. — Petitions in general.  
1715. — Circulation of petitions.

**XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

1716. — Ballots; ballot title.  
1717. Referendum.  
1718. — In general.  
1719. — Petitions.  
1720. Redistricting and reapportionment.  
1721. Lobbying.

**(G) PROPERTY AND EVENTS.****1. IN GENERAL.**

1725. In general.

**2. GOVERNMENT PROPERTY AND EVENTS.**

*Educational institutions, see XVIII(Q). Soliciting on government property, see 1871 et seq.*

1730. In general.  
1731. Time, place, and manner restrictions in general.  
1732. Public forum in general.  
1733. — In general.  
1734. — Nature and requisites.  
1735. — Justification for exclusion or limitation.  
1736. Traditional public forum in general.  
1737. — In general.  
1738. — Nature and requisites.  
1739. — Justification for exclusion or limitation.  
1740. Limited public forum in general.  
1741. — In general.  
1742. — Nature and requisites.  
1743. — Justification for exclusion or limitation.  
1744. Designated public forum in general.  
1745. — In general.  
1746. — Nature and requisites.  
1747. — Justification for exclusion or limitation.  
1748. Non-public forum in general.  
1749. — In general.  
1750. — Nature and requisites.  
1751. — Justification for exclusion or limitation.  
1752. Proprietary function of government.  
1753. Licenses and permits in general.  
1754. Advertising in general.  
1755. Vendors in general.  
1756. Religious uses.

**92. CONSTITUTIONAL LAW****XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 1757. Religious, holiday, or seasonal displays or depictions.
- 1758. Public squares, plazas, and greens.
- 1759. Streets and highways.
- 1760. Sidewalks.
- 1761. Parks and forests.
- 1762. Parades.
- 1763. Libraries.
- 1764. Fairs, festivals, exhibitions, and conventions.
- 1765. Public housing.
- 1766. Transit systems and stations.
- 1767. Airports, aviation, and airspace.
- 1768. Courthouses and courtrooms.  
*See also XVIII(V).*
- 1769. Legislative buildings and offices.
- 1770. Postal property.
- 1771. Restrictions imposed by, or on account of, users or licenses of governmental property.

**3. GOVERNMENT MEETINGS AND PROCEEDINGS.***Judicial proceedings, see XVIII(V).*

- 1775. In general.

**4. PRIVATE PROPERTY.***Solicitation, see XVIII(M).*

- 1780. In general.
- 1781. Landlord and tenant; leased premises.
- 1782. Stores, shopping centers, or malls.
- 1783. Smoking regulations.

**5. UTILITY POLES.**

- 1785. In general.

**6. ZONING AND LAND USE.***Advertising and signs, see XVIII(E).*

- 1790. In general.

**7. HEALTH CARE FACILITIES.***Protests and picketing, see 1848 and 1854.*

- 1795. In general.

**(H) LAW ENFORCEMENT; CRIMINAL CONDUCT.***Criminal proceedings, see XVIII(V)2. Officers, employment issues relating to, see 1955.*

- 1800. In general.
- 1801. Incitement or encouragement of crime or lawless action.  
*Clear and present danger test, in general, see 1529. Fighting words, in general, see 1562.*

**XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 1802. Retaliation in general.
- 1803. Investigation or surveillance.
- 1804. Searches and seizures.
- 1805. Decision to prosecute.
- 1806. Arrest.
- 1807. Particular offenses in general.
- 1808. Assault and battery.
- 1809. Controlled substances.
- 1810. Conspiracy.
- 1811. Trespass.
- 1812. Disorderly conduct.
- 1813. Breach of the peace; unlawful assembly.
- 1814. Interaction with public safety officials.
- 1815. Bias or hate crimes.  
*Cross burning, see 1834.*
- 1816. Solicitation.
- 1817. Profiting from criminal activity or advocacy thereof.
- 1818. Sex offenders.

**(I) HARASSMENT AND THREATS.**

- 1825. In general.
- 1826. Harassment.
- 1827. — In general.
- 1828. — Harassment by government due to speech.
- 1829. Threats.
- 1830. — In general.
- 1831. — True threats.
- 1832. — Public employees or officials, threats against.
- 1833. Stalking.
- 1834. Cross burning.

**(J) NOISE AND SOUND AMPLIFICATION.**

- 1840. In general.
- 1841. Motor vehicles.

**(K) PROTESTS AND DEMONSTRATIONS  
IN GENERAL.***Anti-government protests, see 1864. Labor protests and picketing, see 1916.***1. IN GENERAL.**

- 1845. In general.
- 1846. Government property and facilities.
- 1847. Riots.
- 1848. Abortion and health care.

**92. CONSTITUTIONAL LAW****2. PICKETING.**

- 1850. In general.
- 1851. Government property and facilities.
- 1852. Residences.
- 1853. Commercial establishments.
- 1854. Abortion and health care.

**(L) CHALLENGING OR RESISTING GOVERNMENT.**

- 1860. In general.
- 1861. Disloyalty.
- 1862. Advocacy of overthrowing government or revolution.
- 1863. Sedition; insurrection.
- 1864. Anti-government protests and demonstrations.
- 1865. Syndicalism.
- 1866. Flag desecration or disrespect.
- 1867. Espionage.
- 1868. Terrorist organizations.

**(M) SOLICITING, CANVASSING, PAMPHLETTING, LEAFLETTING, AND FUNDRAISING.**

*Politics and elections, see XVIII(F).*

- 1870. In general.
- 1871. Government property, use of.  
*Schools, see ¶1972. Press, rights of, see ¶2079.*
- 1872. Licenses and permits in general.
- 1873. Disclosure requirements.
- 1874. Consent or permission requirements.
- 1875. Misleading, deceptive, or fraudulent activities.
- 1876. Residences.
- 1877. Commercial establishments.
- 1878. Placement of materials on motor vehicles.
- 1879. Charities or religious organizations.
- 1880. Begging or panhandling.

**(N) ENTERTAINMENT.**

*Sexually oriented entertainment, see XVIII(Y).*

- 1885. In general.
- 1886. Licenses and permits in general.
- 1887. Use of government property or facilities in general.
- 1888. Zoning and land use in general.
- 1889. Bookstores and book sellers.  
*Books in general, see ¶1575.*
- 1890. Plays and shows.
- 1891. Theaters; theatrical productions.
- 1892. Motion pictures and videos.
- 1893. Music.

**XVIII. FREEDOM OF SPEECH, EXPRESSION, AND PRESS.(Cont'd)**

- 1894. — In general.
- 1895. — Concerts and performances.
- 1896. Dancing.
- 1897. Games in general.
- 1898. Video and computer games.
- 1899. — In general.
- 1900. — Violent games.
- 1901. Athletics.

**(O) LABOR AND EMPLOYMENT IN GENERAL.**

- 1905. In general.
- 1906. Applicability to governmental and private action; state action.
- 1907. Retaliation.
- 1908. Adverse action; discipline.
- 1909. Discharge.
- 1910. Labor relations.
- 1911. — In general.
- 1912. — Campaigns and attempts at organization.
- 1913. — Dues and fees.
- 1914. — Employer communications.
- 1915. — Injunctions.
- 1916. Protests and demonstrations; picketing.
- 1917. — In general.
- 1918. — Government property and facilities.
- 1919. — Violence.
- 1920. — Secondary picketing.
- 1921. — Injunctions.
- 1922. Boycotts.
- 1923. Service letters.
- 1924. Government contractors, employees of.

**(P) PUBLIC EMPLOYEES AND OFFICIALS.**

- 1925. In general.
- 1926. Public officials in general.
- 1927. Conditions for employment; relinquishment of rights.
- 1928. Retaliation in general.
- 1929. Public or private concern; speaking as "citizen".
- 1930. Mixed public and private speech.
- 1931. Balancing of interests.
- 1932. Causation; substantial or motivating factor.
- 1933. Disruption or interference.



**92. CONSTITUTIONAL LAW****XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 1934. Efficiency of public services.
- 1935. Internal issues; working conditions.
- 1936. Passage of time following speech or activities.
- 1937. Political speech, beliefs, or activities.
- 1938. Policy-making or other confidential employees.
- 1939. Prospective employees; failure to hire.
- 1940. Harassment.
- 1941. Discipline or reprimand.
- 1942. Change in duties or responsibilities.
- 1943. Transfer.
- 1944. Promotion.
- 1945. Suspension or placement on leave.
- 1946. Demotion.
- 1947. Discharge.
- 1948. Failure to rehire, reappoint, or reinstate.
- 1949. Dress; accessories; buttons.
- 1950. Filing of discrimination charges.
- 1951. Filing of lawsuits.
- 1952. Testimony in judicial proceedings or before administrative agencies.
- 1953. Statements to, or contact with, media.
- 1954. Health care workers.
- 1955. Police and other public safety officials.
- 1956. Firefighters and paramedics.
- 1957. Prisons; parole and probation officers.
- 1958. Attorneys, prosecutors, and Attorney General's office.
- 1959. Labor relations; collective bargaining activities.
- 1960. — In general.
- 1961. — Discipline or discharge.
- 1962. — Speech by labor organization.
- 1963. — Dues and fees.

**(Q) EDUCATION.****1. IN GENERAL.**

- 1965. In general.
- 1966. Pedagogical concerns in general.
- 1967. Disruption, disturbance, or interference in general.
- 1968. Access to facilities and other public places; public forum issues.
- 1969. — In general.
- 1970. — Outside persons or organizations.

**XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 1971. Plaques, dedications, or memorials.
- 1972. Distribution of materials.
- 1973. Classroom speech in general; assemblies.
- 1974. Curriculum, books, and classroom materials.
- 1975. Student speech or conduct.
- 1976. — In general.
- 1977. — Discipline in general.
- 1978. — Disruption, disturbance, or interference in general.
- 1979. — Threats or violence.
- 1980. — Protests and demonstrations.
- 1981. — Dress and grooming.
- 1982. Parental speech or conduct.
- 1983. Libraries.
- 1984. Student organizations.
- 1985. Student government elections.
- 1986. Student publications.
- 1987. School board officials and meetings.
- 1988. Employees.
- 1989. — In general.
- 1990. — Retaliation.
- 1991. — Public or private concern; speaking as "citizen".
- 1992. — Political speech, beliefs, or activity.
- 1993. — Discipline or reprimand.
- 1994. — Discharge.
- 1995. — Non-renewal of contract.
- 1996. — Dress; accessories; buttons.
- 1997. — Statements to, or contact with, media.
- 1998. — Statements at board meetings.
- 1999. — Curriculum; classroom materials.
- 2000. — Coaches and other athletic department employees.
- 2001. — Administrators.
- 2002. — Employee associations; collective bargaining activities.

**2. POST-SECONDARY INSTITUTIONS.**

- 2005. In general.
- 2006. Access to facilities and other public places; public forum issues.
- 2007. — In general.
- 2008. — Outside persons or organizations.
- 2009. Student speech or conduct.

**92. CONSTITUTIONAL LAW****XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 2010. — In general.
- 2011. — Discipline or retaliation.
- 2012. Protests and demonstrations.
- 2013. Activity fees or funds.
- 2014. Student government.
- 2015. Student publications.
- 2016. Employees.
- 2017. — In general.
- 2018. — Retaliation.
- 2019. — Public or private concern.
- 2020. — Discipline or reprimand.
- 2021. — Discharge.
- 2022. — Non-renewal of contract.
- 2023. — Coaches and other athletic department personnel.
- 2024. — Employee associations; collective bargaining activities.
- 2025. Law schools.

**3. INTERSCHOLASTIC ASSOCIATIONS.**

- 2030. In general.

**(R) ARMED SERVICES.**

- 2035. In general.
- 2036. Selective service and the draft.
- 2037. Members of armed services.  
*Sexual orientation, see* §2266.
- 2038. Civilian employees.
- 2039. Military installations.

**(S) ATTORNEYS, REGULATION OF.**

*Courtroom speech, see also* XVIII(V).

- 2040. In general.
- 2041. Clients' rights in general.
- 2042. Unlicensed practice of law.
- 2043. Admission to bar.
- 2044. Professional conduct regulations in general.
- 2045. Sanctions or discipline for unprofessional conduct, in general.
- 2046. Statements regarding judge or court officials.
- 2047. Statements regarding other attorneys.
- 2048. Solicitation.
- 2049. Advertising.

**(T) JUDGES, REGULATION OF.**

- 2050. In general.

**XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 2051. Impartiality; recusal or reassignment.
- 2052. Discipline.
- 2053. Elections.
- 2054. — In general.
- 2055. — Contributions.
- 2056. — Pledges; promises; comments on issues.

**(U) PRESS IN GENERAL.**

*Broadcast journalists, see* XVIII(W). *Access to judicial proceedings and documents, see* XVIII(V). *Defamation, see* XVIII(X). *Contempt, see* §2121. *Advertising, see also* §1640 *et seq.* *Books in general, see* §1575.

- 2070. In general.
- 2071. "Press" defined.
- 2072. Enforcement of generally applicable laws.
- 2073. Reporter's privilege.
- 2074. Disclosure of sources.
- 2075. Discovery requests and subpoenas.
- 2076. Disclosure of information about juveniles.
- 2077. Access to, and publication of, public information or records.
- 2078. Access to prisons and executions.
- 2079. Distribution of materials in public places.
- 2080. Newsracks and newsstands.
- 2081. Taxation.

**(V) JUDICIAL PROCEEDINGS.**

*Sanctioning or disciplining attorney for unprofessional conduct, see* §2045 *et seq.*

**1. IN GENERAL.**

- 2085. In general.
- 2086. Conduct of proceedings in general.
- 2087. Access to proceedings; closure.
- 2088. Discovery and subpoenas.
- 2089. Court documents or records.
- 2090. Spectators or observers.
- 2091. Class actions.
- 2092. Publicity regarding proceedings.
- 2093. — In general.
- 2094. — Proceedings involving children and minors.
- 2095. — Attorney speech about pending proceedings.
- 2096. Juries.

**92. CONSTITUTIONAL LAW****XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 2097. Witnesses.
- 2098. Costs, fees, and sanctions.
- 2099. Photographing, recording, or televising proceedings.

**2. CRIMINAL PROCEEDINGS.**

- 2100. In general.
- 2101. Conduct of proceedings in general.
- 2102. Admissibility of evidence.
- 2103. Sentencing and punishment.
- 2104. Probation and parole.
- 2105. Access to proceedings; closure.
- 2106. — In general.
- 2107. — Preliminary or pretrial proceedings.
- 2108. Court documents or records.
- 2109. — In general.
- 2110. — Pretrial access.
- 2111. Publicity regarding proceedings.
- 2112. — In general.
- 2113. — Proceedings involving children and minors.
- 2114. — Attorney speech about pending proceedings.
- 2115. Witnesses.
- 2116. Juries.
- 2117. Grand juries.
- 2118. Photographing, recording, or televising proceedings.

**3. CONTEMPT.**

- 2119. In general.
- 2120. Attorneys.
- 2121. Press.

**(W) TELECOMMUNICATIONS AND COMPUTERS.**

*Sexual expression, see* Ⓒ2252.

- 2125. In general.
- 2126. Broadcasting and electronic media in general.  
*Advertising, other than political advertising, see* Ⓒ1643 *et seq.*
- 2127. — In general.
- 2128. — Licenses and permits.
- 2129. — Journalists.
- 2130. Radio.  
*Advertising, other than political advertising, see* Ⓒ1644 *et seq.*
- 2131. — In general.

**XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 2132. — Program content.
- 2133. — Spectrum and frequency.
- 2134. — Journalists.
- 2135. Television.  
*Advertising, other than political advertising, see* Ⓒ1643 *et seq.*
- 2136. — In general.
- 2137. — Program content.
- 2138. — Journalists.
- 2139. Cable and satellite television systems; community antenna systems.
- 2140. — In general.
- 2141. — Franchises.
- 2142. — Public or local access or programming.
- 2143. Telephones.
- 2144. — In general.
- 2145. — Solicitation; telemarketing; automated dialing.
- 2146. — Offenses.
- 2147. Computer codes, programs, software, or services.  
*Computer games, see* Ⓒ1898. *Copyright, see* Ⓒ1603. *Import/export regulations, see* Ⓒ1616.
- 2148. Internet.
- 2149. — In general.
- 2150. — Service providers.
- 2151. — Website content.
- 2152. — Domain names.
- 2153. — Educational institutions.
- 2154. — Libraries.
- 2155. Electronic mail.
- 2156. Antennas.
- 2157. Interception or surveillance; wiretapping.

**(X) DEFAMATION.**

*False statements in general, see* XVIII(D).

- 2160. In general.
- 2161. — In general.
- 2162. — Private individuals.
- 2163. — Public figures in general.
- 2164. — Public employees and officials.
- 2165. — Opinion.
- 2166. — Negligence.
- 2167. Particular issues and applications.
- 2168. — In general.
- 2169. — Public figures.
- 2170. — Public employees and officials.

## 92. CONSTITUTIONAL LAW

**XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 2171. Discovery in defamation actions.
- 2172. Remedies for defamation.
- 2173. — In general.
- 2174. — Injunctions.
- 2175. — Punitive damages.
- 2176. Criminal liability.

**(Y) SEXUAL EXPRESSION.**

- 2180. In general.
- 2181. Sexual activity in general.
- 2181.5. Sexual orientation in general.
- 2182. Sodomy in general.
- 2183. Nudity in general.
- 2184. Depictions or portrayals of sex or nudity in general.
- 2185. Adult speech or use in general.
- 2186. Indecency in general.
- 2187. Public nudity or indecency.
- 2188. Lewdness in general.
- 2189. Obscenity in general.
- 2190. — In general.
- 2191. — Lack of constitutional protection.
- 2192. Pornography in general.
- 2193. Print publications.
- 2194. — In general.
- 2195. — Newsracks or vending machines.
- 2196. Music.
- 2197. — In general.
- 2198. — Concerts and performances.
- 2199. Solicitation of sex.
- 2200. Prostitution.
- 2201. Nude dancing in general.
- 2202. Semi-nude dancing in general.
- 2203. Sexually oriented businesses; adult businesses or entertainment.
- 2204. — In general.
- 2205. — Performers in general.
- 2206. — Nudity in general.
- 2207. — Nude or semi-nude dancing.
- 2208. — Licenses and permits in general.
- 2209. — Geographic restrictions in general.
- 2210. — Zoning and land use in general.
- 2211. — Hours of operation.
- 2212. — Content neutrality.
- 2213. — Secondary effects.

**XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 2214. — Disclosure and recordkeeping requirements.
- 2215. — Availability of other sites.
- 2216. — Physical layout and staging requirements.
- 2217. — Proximity of performers to patrons.
- 2218. — Contact between performers and patrons.
- 2219. Theaters in general.
- 2220. Bookstores.
- 2221. — In general.
- 2222. — Licenses and permits.
- 2223. — Zoning and land use.
- 2224. Motion pictures and videos.
- 2225. — In general.
- 2226. — Obscenity.
- 2227. — Zoning and land use.
- 2228. — Seizure.
- 2229. Video stores.
- 2230. — In general.
- 2231. — Booths.
- 2232. Cabarets, discotheques, dance halls, and nightclubs in general.
- 2233. — In general.
- 2234. — Performers.
- 2235. — Zoning and land use.
- 2236. Intoxicating liquors.
- 2237. — In general.
- 2238. — Lewdness in general.
- 2239. — Nudity in general.
- 2240. — Performers.
  - (1). In general.
  - (2). Nude or semi-nude dancing.
- 2241. — Prohibition against intoxicating liquors in adult establishments.
- 2242. Restaurants and other eating establishments.
- 2243. Advertising, signs, and billboards.
- 2244. Children and minors, protection of.
- 2245. — In general.
- 2246. — Pornography.
- 2247. — Solicitation of minors; importuning.
- 2248. — Sexual performances.
- 2249. — Possession or receipt of materials.

**92. CONSTITUTIONAL LAW****XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 2250. — Sale, distribution, dissemination, or reproduction of materials involving children and minors.
- 2251. — Sale, distribution, or dissemination of materials to children and minors.
- 2252. Telecommunications.
- 2253. — In general.
- 2254. — Telephones.
- 2255. — Broadcasting in general.
- 2256. — Radio.
- 2257. — Television.
- 2258. — Cable television; community antenna and satellite systems.
- 2259. — Internet.
- 2260. — Solicitation of children and minors.
- 2261. Video games.
- 2262. Parolees and probationers.
- 2263. Students.
- 2264. Armed services.
- 2265. — In general.
- 2266. — Sexual orientation.

**(Z) PRISONS AND PRETRIAL DETENTION.**

- 2270. In general.
- 2271. Rational or reasonable basis in general.
- 2272. Sexual expression in general.
- 2273. Grievances in general.
- 2274. Discipline in general.
- 2275. Dress, hair, or grooming.
- 2276. Press conferences or interviews.
- 2277. Abusive or inappropriate language; harassment.
- 2278. Retaliation in general.
- 2279. — In general.
- 2280. — Discipline or disciplinary charges in general.
- 2281. — Segregation or isolation.
- 2282. Possession of or access to documents and reading material in general.
- 2283. Mail in general.
- 2284. — In general.
- 2285. — Reasonableness of policies.
- 2286. — Opening, reading, or inspection.
- 2287. — Censorship, rejection, or withholding.
- 2288. Incoming mail.

**XVIII. FREEDOM OF SPEECH, EXPRESSION,  
AND PRESS.(Cont'd)**

- 2289. — In general.
- 2290. — Opening, reading, or inspection.
- 2291. — Censorship, rejection, or withholding.
- 2292. — Photographs.
- 2293. — Magazines, periodicals, and catalogs.
- 2294. — Newspapers.
- 2295. Outgoing mail.
- 2296. — In general.
- 2297. — Opening, reading, or inspection.
- 2298. — Censorship, rejection, or withholding.
- 2299. Inmate-to-inmate correspondence.
- 2300. Legal mail or papers.
- 2301. — In general.
- 2302. — Opening, reading, or inspection.
- 2303. Telephone or Internet use or access.
- 2304. Motion pictures or videos.

**XIX. RIGHTS TO OPEN COURTS,  
REMEDIES, AND JUSTICE.**

*Due process, see XXVII; First Amendment, see X.*

- 2310. In general.
- 2311. Right of access to the courts and a remedy for injuries in general.  
*Excludes right to a fair and impartial trial in general, see CRIMINAL LAW and TRIAL.*
- 2312. Abrogation, modification, or recognition of remedies.
- 2313. Conditions, limitations, and other restrictions on access and remedies.
- 2314. — In general.
- 2315. — Time for proceedings.
- 2316. — Taxation.
- 2317. — Costs and fees; indigency.
- 2318. Right to obtain justice in general.
- 2319. Right to obtain justice freely.
- 2320. — In general.
- 2321. — Taxation.
- 2322. — Costs and fees; indigency.
- 2323. Right to obtain justice promptly.  
*Excludes Sixth Amendment right to a speedy trial, see CRIMINAL LAW.*
- 2324. Right to appeal and other proceedings for review.
- 2325. Prisoners and pretrial detainees.

**92. CONSTITUTIONAL LAW****XX. SEPARATION OF POWERS.****(A) IN GENERAL.**

- 2330. In general.
- 2331. Purposes of separation of powers.
- 2332. Encroachment in general.
- 2333. Delegation in general.

**(B) LEGISLATIVE POWERS AND FUNCTIONS.****1. IN GENERAL.**

- 2340. Nature and scope in general.
- 2341. Plenary power.
- 2342. Means and methods.

**2. ENCROACHMENT ON JUDICIARY.**

- 2350. In general.
- 2351. Construction of statutes in general.
- 2352. Adjudication of rights in general.
- 2353. Disposition of property in general.
- 2354. Establishment, organization, and jurisdiction of courts.
- 2355. — In general.
- 2356. — Appellate courts.
- 2357. Remedies and procedure in general.
- 2358. Standing.
- 2359. Discovery.
- 2360. Venue.
- 2361. Limitation of actions.
- 2362. Evidence.
- 2363. Jury.
- 2364. Damages.
- 2365. Injunctions and equitable relief.
- 2366. New trial.
- 2367. Judicial recusal or disqualification.
- 2368. Alternative dispute resolution.
- 2369. Criminal law.
- 2370. — In general.
- 2371. — Sentencing and punishment.
- 2372. Appellate procedure and judicial review.
- 2373. Habeas corpus.
- 2374. Practice of law.
- 2375. Contempt.
- 2376. Taxation.
- 2377. Costs and fees.
- 2378. — In general.
- 2379. — Filing fees.
- 2380. — Attorney fees.

**XX. SEPARATION OF POWERS.(Cont'd)**

- 2381. Imposition of legislative preference in particular proceedings.
- 2382. — In general.
- 2383. — Prescribing rule of decision or directing specific result.
- 2384. — Overturning judgment.
- 2385. — Prisoner litigation.

**3. ENCROACHMENT ON EXECUTIVE.**

- 2390. In general.
- 2391. Appointment, tenure and removal of public employees and officials.
- 2392. Pardon and parole.
- 2393. Veto power.
- 2394. Foreign policy and national defense.

**4. DELEGATION OF POWERS.**

- 2400. In general.
- 2401. To legislative committees.
- 2402. To Judiciary.
- 2403. — In general.
- 2404. — Sentencing and punishment.
- 2405. To executive, in general.
- 2406. — In general.
- 2407. — Standards for guidance.
- 2408. — Rule making.
- 2409. — Fact finding.
- 2410. To executive, particular issues and applications.
- 2411. — In general.
- 2412. — Agriculture and food.
- 2413. — Armed services.
- 2414. — Business and industry.
  - (1). In general.
  - (2). Financial institutions.
  - (3). Insurance.
  - (4). Securities regulation.
  - (5). Unfair trade practices.
- 2415. — Criminal law.
  - (1). In general.
  - (2). Prosecutors.
  - (3). Controlled substances.
  - (4). Sentencing and punishment.
  - (5). Prisons.
- 2416. — Education.
- 2417. — Elections.
- 2418. — Eminent domain.

**92. CONSTITUTIONAL LAW****XX. SEPARATION OF POWERS.(Cont'd)**

- 2419. — Environment and natural resources.
- 2420. — Foreign policy and national defense.
- 2421. — Government bonds.
- 2422. — Health.
  - (1). In general.
  - (2). Medicare, Medicaid, and medical assistance.
  - (3). Mental health.
- 2423. — Immigration and citizenship.
- 2424. — Labor and employment.
  - (1). In general.
  - (2). Collective bargaining.
  - (3). Occupational safety.
  - (4). Wages and hours.
  - (5). Public employment.
- 2425. — Licenses.
  - (1). In general.
  - (2). Motor vehicles and operators.
  - (3). Occupations and professions.
- 2426. — Public utilities.
- 2427. — Public welfare.
  - (1). In general.
  - (2). Foster care.
- 2428. — Tariffs.
- 2429. — Taxation and public finance.
- 2430. — Transportation.
  - (1). In general.
  - (2). Automobiles.
  - (3). Aviation.
  - (4). Carriers.
  - (5). Highways.
- 2431. — Unemployment compensation.
- 2432. — Workers' compensation.
- 2433. To federal government.
- 2434. To state and local authorities.
- 2435. — In general.
- 2436. — States and state employees and officials.
- 2437. — Municipalities and municipal employees and officials.
  - Delegation by and between branches of municipal government, see MUNICIPAL CORPORATIONS.*
- 2438. — Counties and county employees and officials.
  - Delegation by and between branches of county government, see COUNTIES.*

**XX. SEPARATION OF POWERS.(Cont'd)**

- 2439. — School boards and school employees and officials.
- 2440. — Park commissioners.
- 2442. To non-governmental entities.
- 2443. To Indian tribes.
- 2444. To foreign governments or international organizations.
- 2445. Local option and submission to popular vote.
- 2446. Conditional and contingent legislation.

**(C) JUDICIAL POWERS AND FUNCTIONS.****1. IN GENERAL.**

- 2450. Nature and scope in general.
- 2451. Interpretation of constitution in general.
- 2452. Determination of powers of other branches in general.
- 2453. Determination of constitutionality of actions of other branches in general.
- 2454. Determination of constitutionality of statutes.
- 2455. Protection of constitutional rights.
- 2456. Determination of justiciability.
- 2457. Interpretation of statutes.
- 2458. Application of common law.
- 2459. Regulation of practice of law.

**2. ENCROACHMENT ON LEGISLATURE.**

- 2470. In general.
- 2471. Modification of common law.
- 2472. Making, interpretation, and application of statutes.
  - Interpretation of statutes when encroachment is not at issue, see STATUTES.*
- 2473. — In general.
- 2474. — Judicial rewriting or revision.
- 2475. — Judicial “reading into” or “out of” statutory language.
- 2476. — Judicial disregarding of statutes.
- 2477. Initiatives.
- 2478. Invalidation, annulment, or repeal of statutes.
- 2479. Determination of facts.
- 2480. — In general.
- 2481. — Emergency.
- 2482. — Public interest.
- 2483. Determination of propriety of classification.

**92. CONSTITUTIONAL LAW****XX. SEPARATION OF POWERS.(Cont'd)**

- 2484. Police power questions.
- 2485. Inquiry into legislative judgment.
- 2486. — In general.
- 2487. — Motive.
- 2488. — Policy.
- 2489. — Wisdom.
- 2490. — Justice.
- 2491. — Necessity.
- 2492. — Desirability.
- 2493. — Reasonableness.
- 2494. — Expediency.
- 2495. — Equity.
- 2496. — Appropriateness.
- 2497. — Use of best means available.
- 2498. — Political ramifications.
- 2499. Particular issues and applications.
- 2500. — In general.
- 2501. — Armed services.
- 2502. — Business and industry.
  - (1). In general.
  - (2). Financial institutions.
  - (3). Antitrust and trade regulation.
  - (4). Insurance.
  - (5). Securities regulation.
- 2503. — Civil remedies and procedure.
  - (1). In general.
  - (2). Creation of rights of action.
  - (3). Evidence.
  - (4). Time for proceedings.
  - (5). Privileges.
- 2504. — Civil rights.
- 2505. — Contracts.
- 2506. — Corporations.
- 2507. — Criminal law.
  - (1). In general.
  - (2). Controlled substances.
  - (3). Sentencing and punishment.
  - (4). Prisons.
- 2508. — Education.
- 2509. — Elections.
- 2510. — Eminent domain.
- 2511. — Environment and natural resources.
- 2512. — Foreign policy and national defense.
- 2513. — Governmental immunity.
- 2514. — Government property.
- 2515. — Habeas corpus.

**XX. SEPARATION OF POWERS.(Cont'd)**

- 2516. — Health.
    - (1). In general.
    - (2). Mental health.
  - 2517. — Immigration and citizenship.
  - 2518. — Intellectual property.
  - 2519. — Indians.
  - 2520. — Labor and employment.
    - (1). In general.
    - (2). Collective bargaining.
    - (3). Occupational safety.
    - (4). Wages and hours.
    - (5). Public employment.
  - 2521. — Municipalities.  
*Encroachment of municipal branch of government by other municipal branch, see MUNICIPAL CORPORATIONS.*
  - 2522. — Property rights.
    - (1). In general.
    - (2). Landlord and tenant.
  - 2523. — Public officials.
    - (1). In general.
    - (2). Impeachment.
  - 2524. — Public utilities.
  - 2525. — Taxation and public finance.
  - 2526. — Torts.
  - 2527. — Unemployment compensation.
  - 2528. — Workers' compensation.
  - 2529. — Zoning and land use.
  - 2530. Determination as to whether general law is applicable or whether special law can be enacted.
  - 2531. Membership, organization, and procedure of legislature.
  - 2532. — In general.
  - 2533. — Election contests.
- 3. ENCROACHMENT ON EXECUTIVE.**
- 2540. In general.
  - 2541. Review of administrative decisions in general.
  - 2542. Particular issues and applications.
  - 2543. — In general.
  - 2544. — Armed services.
  - 2545. — Criminal law.
    - (1). In general.
    - (2). Prosecutors.
    - (3). Prisons.
    - (4). Pardon and parole.
  - 2546. — Education.



**92. CONSTITUTIONAL LAW****XX. SEPARATION OF POWERS.(Cont'd)**

- 2547. — Elections.
- 2548. — Environment and natural resources.
- 2549. — Executive orders.
- 2550. — Executive privilege and immunity.
- 2551. — Foreign policy and national defense.
- 2552. — Health.
- 2553. — Immigration and citizenship.
- 2554. — Indians.
- 2555. — Labor, employment, and public officials.
- 2556. — Licenses.
- 2557. — Public utilities.
- 2558. — Public welfare in general.
- 2559. — Social security.
- 2560. — Taxation and public finance.
- 2561. Powers, duties, and acts under legislative authority.
- 2562. — In general.
- 2563. — Judicial encroachment on executive acts taken under statutory authority.
- 2564. — Judicial exercise of statutory authority as encroaching on executive.

**4. DELEGATION OF POWERS BY JUDICIARY.**

- 2570. In general.
- 2571. To legislature.
- 2572. To executive in general.
- 2573. To prosecutors.
- 2574. To probation or parole officers.

**5. POLITICAL QUESTIONS.**

- 2580. In general.
- 2581. Adoption of constitution and amendments.
- 2582. Origination clause.
- 2583. Republican form of government.
- 2584. Elections.
- 2585. — In general.
- 2586. — Apportionment, election, and discipline of members of legislature.
- 2587. Political parties.
- 2588. Foreign policy and national defense.
- 2589. Indians.
- 2590. Public officials.
- 2591. — In general.

**XX. SEPARATION OF POWERS.(Cont'd)**

- 2592. — Impeachment.
- 2593. Taxation and assessments.

**6. ADVISORY OPINIONS.**

- 2600. In general.
- 2602. Constitutionality of statutes or acts of other branches in general.
- 2603. Particular issues and applications.
- 2604. — In general.
- 2605. — Criminal law.
  - (1). In general.
  - (2). Sentencing and punishment.
- 2606. — Elections.
- 2607. — Environment and natural resources.
- 2608. — Labor and employment.
- 2609. — Taxation and public finance.

**(D) EXECUTIVE POWERS AND FUNCTIONS.**

- 2620. Nature and scope in general.
- 2621. Encroachment on legislature.
- 2622. Encroachment on judiciary.
- 2623. — In general.
- 2624. — Executive encroachment on judicial acts taken under statutory authority.
- 2625. — Executive exercise of statutory authority as encroaching on judiciary.
  - (1). In general.
  - (2). Prosecutors.
- 2626. Delegation of powers by executive.

**XXI. VESTED RIGHTS.**

*Ex post facto, see XXIII; Due process, see XVII.*

- 2630. Constitutional guarantees in general.
- 2631. Property in general.
- 2632. — In general.
- 2633. — Curative acts validating transfers.
- 2634. Descent and distribution.
- 2635. Dower and curtesy.
- 2636. Community property.
- 2637. Improvement and betterment laws.
- 2638. Redemption laws.
- 2639. Exemption and homestead laws.
- 2640. Taxation.
- 2641. Licenses, permits, franchises, and other privileges.
- 2642. Zoning and land use.

**92. CONSTITUTIONAL LAW****XXI. VESTED RIGHTS.(Cont'd)**

- 2643. Public employees and officials.
- 2644. — In general.
- 2645. — Compensation and benefits.
- 2646. Public funds and assistance.
- 2647. Penalties, forfeitures, fines, and punishment.
- 2648. Rights of action and defenses.
- 2649. Legal remedies; procedure in general.
- 2650. Time for proceedings.
- 2651. Pleading.
- 2652. Evidence.
- 2653. Verdicts and judgments.
- 2654. Appeal or other proceedings for review.
- 2655. Costs and fees.

**XXII. OBLIGATION OF CONTRACT.****(A) IN GENERAL.**

- 2660. In general.
- 2661. Application in general.
- 2662. Literal application.
- 2663. Application to state and local laws and regulations.
- 2664. Application to federal laws and regulations.
- 2665. What law governs.
- 2666. What is a “law”.
- 2667. Retroactivity in general.
- 2668. What is a “contractual obligation”; existing law.
- 2669. Existence and validity of contract.
- 2670. Future contracts.
- 2671. Existence and extent of impairment.
- 2672. Police power; purpose of regulation.
- 2673. Judicial decisions.
- 2674. Eminent domain.
- 2675. Taxation.

**(B) CONTRACTS WITH GOVERNMENTAL ENTITIES.****1. IN GENERAL.**

- 2680. In general.
- 2681. Statutory creation of contractual rights.
- 2682. Literal application.
- 2683. What law governs.
- 2684. What is a “law”.
- 2685. Existence and validity of contract.
- 2686. Future contracts.
- 2687. Existence and extent of impairment.

**XXII. OBLIGATION OF CONTRACT.(Cont'd)**

- 2688. Police power; purpose of regulation.
- 2689. Contracts with states in general.
- 2690. Contracts with counties in general.
- 2691. Contracts with municipal corporations in general.
- 2692. Contracts with school boards and school districts in general.

**2. PARTICULAR ISSUES AND APPLICATIONS.**

- 2695. In general.
- 2696. Contracts with states in general.
- 2697. Contracts with counties in general.
- 2698. Contracts with municipal corporations in general.
- 2699. Contracts with school boards and school districts in general.
- 2700. Licenses.
- 2701. Leases.
- 2702. Securities issued by governmental entities.
- 2703. — In general.
- 2704. — Bonds.
- 2705. Grants and sales in general.
- 2706. Charter rights in general.
- 2707. Charters of municipal corporations.
- 2708. Monopolies and franchises.
- 2709. Corporate rights and privileges.
- 2710. — In general.
- 2711. — Charters.
- 2712. Insurance.
- 2713. Gambling and gaming.
- 2714. Railroads.
- 2715. Right to use streets and highways.
- 2716. Right to charges and tolls.
- 2717. Taxation.
- 2718. — In general.
- 2719. — Exemptions.
- 2720. — Tax sales.
- 2721. Public employees and officials.
- 2722. — In general.
- 2723. — Compensation.
- 2724. — Tenure or term of employment.
- 2725. — Pensions and retirement plans.
  - (1). In general.
  - (2). Existence of contractual rights.
  - (3). Existence and extent of impairment in general.
  - (4). Eligibility; retirement age.

**92. CONSTITUTIONAL LAW****XXII. OBLIGATION OF CONTRACT.**(Cont'd)

- (5). Contributions and funding.
- (6). Amount of benefits and termination thereof.
- 2726. Contracts with United States.

**(C) CONTRACTS WITH NON-GOVERNMENTAL ENTITIES.****1. IN GENERAL.**

- 2730. In general.
- 2731. Literal application.
- 2732. What law governs.
- 2734. Existence and validity of contract.
- 2735. Future contracts.
- 2736. Existence and extent of impairment.
- 2737. Police power; purpose of regulation.
- 2738. Imposition of condition on performance.
- 2739. Invalidation of contract.
- 2740. Change, suspension, or withdrawal of remedies in general.

**2. PARTICULAR ISSUES AND APPLICATIONS.**

- 2745. In general.
- 2746. Contracts for services.
- 2747. — In general.
- 2748. — Public utilities.
- 2749. — Legal services.
- 2750. Labor and employment.
- 2751. — In general.
- 2752. — Workers' compensation.
- 2753. Sales in general.
- 2754. Real property in general.
- 2755. Leases in general.
- 2756. Mineral interests.
- 2757. Business relationships in general.
- 2758. Insurance.
- 2759. Marriage and divorce.
- 2760. Liens and mortgages.
- 2761. Preference and rights of creditors.
- 2762. Insolvency laws.
- 2763. Penalties or forfeitures.
- 2764. Actions.
- 2765. — In general.
- 2766. — Limitation of actions.
- 2767. — Preliminary proceedings.
- 2768. — Evidence.
- 2769. — Trial, judgment, and review.
- 2770. — Costs and fees.

**XXII. OBLIGATION OF CONTRACT.**(Cont'd)

- 2771. Enforcement of judgment or debt.
- 2772. — In general.
- 2773. — Stay of execution.
- 2774. — Exemptions from legal process.
- 2775. — Execution sales; redemption.

**XXIII. EX POST FACTO PROHIBITIONS.**

*Definition, application, and validity of retroactive or retrospective statutes not described as ex post facto, see STATUTES IX. Laws impairing obligation of contracts, see CONSTITUTIONAL LAW XXII. Bills of attainder, see CONSTITUTIONAL LAW ¶1095. Due process challenges to retroactive laws, see CONSTITUTIONAL LAW ¶3907, 4508.*

**(A) CONSTITUTIONAL PROHIBITIONS IN GENERAL.**

- 2781. In general.
- 2782. Relationship between federal and state provisions.
- 2783. Power to enact.
- 2784. Purpose.
- 2785. Relationship to retroactive laws.
- 2786. Entities subject to provisions.
- 2787. — In general.
- 2788. — Governmental entities.
  - (1). In general.
  - (2). Executive branch.
  - (3). Legislative branch.
  - (4). Judicial branch.
- 2789. Penal laws in general.
- 2790. Punishment in general.
- 2791. Substantive rights in general.
- 2792. Vested rights in general.
- 2793. Remedies and procedure in general.

**(B) PARTICULAR ISSUES AND APPLICATIONS.**

- 2800. In general.
- 2801. Particular offenses.
- 2802. — In general.
- 2803. — Grade or degree of offense.
- 2804. — Traffic offenses.
- 2805. — Homicide.
- 2806. — Controlled substances.
- 2807. — Assault and battery.
- 2808. — Sex offenses.
- 2809. Criminal proceedings.
- 2810. — In general.
- 2811. — Statutes of limitations.
- 2812. — Evidence.
- 2813. — Mental competency.

**92. CONSTITUTIONAL LAW****XXIII. EX POST FACTO  
PROHIBITIONS.(Cont'd)**

- 2814. Sentencing and imprisonment.
- 2815. — In general.
- 2816. — Length of sentence.
- 2817. — Sentencing guidelines.
- 2818. — Probation.
- 2819. Sex offenders.
- 2820. — In general.
- 2821. — Registration.
- 2822. — Involuntary commitment.
- 2823. Parole.
- 2824. Civil actions and proceedings.
- 2825. — In general.
- 2826. — Statutes of limitations.
- 2827. Juries.
- 2828. Administrative agencies and proceedings in general.
- 2829. Mental health.
- 2830. — In general.
- 2831. — Institutions.
- 2832. Family law.
- 2833. — In general.
- 2834. — Divorce.
- 2835. — Child support.
- 2836. — Termination of parental rights.
- 2837. Juvenile justice.
- 2838. Aliens and immigration.
- 2839. Taxation.
- 2840. Labor and employment.
- 2841. — In general.
- 2842. — Public employees and officials.
- 2843. Licenses in general.
- 2844. Trade, business, and regulated industries.
- 2845. Government benefits.

**XXIV. PRIVILEGES OR IMMUNITIES;  
EMOLUMENTS.****(A) IN GENERAL; STATE CONSTITUTIONAL  
PROVISIONS.****1. IN GENERAL.**

- 2860. In general.
- 2861. Relationship to federal provisions.
- 2862. Entities subject to, or protected by, constitutional provisions.
- 2863. — In general.
- 2864. — Governmental entities.

**XXIV. PRIVILEGES OR IMMUNITIES;  
EMOLUMENTS.(Cont'd)**

- 2865. Deference to legislative or other governmental entity.
- 2866. Rational or reasonable basis.
- 2867. Uniform applicability or operation; equal availability.
- 2868. Arbitrariness.

**2. PARTICULAR ISSUES AND APPLICATIONS.**

- 2870. In general.
- 2871. Local government.
- 2872. Criminal law.
- 2873. — In general.
- 2874. — Offenses.
- 2875. — Proceedings.
- 2876. — Sentencing, punishment, and prisons.
- 2877. Labor and employment.
- 2878. Public officials.
- 2879. Public employment.
- 2880. — In general.
- 2881. — Civil service.
- 2882. Education.
- 2883. Workers' compensation.
- 2884. Trade, business, profession, or occupation, regulation of.
- 2885. Licenses in general.
- 2886. Peddlers and salespersons.
- 2887. Intoxicating liquors.
- 2888. Public utilities.
- 2889. Sunday laws.
- 2890. Fish and game.
- 2891. Taxation.
- 2892. — In general.
- 2893. — Exemptions.
- 2894. Torts.
- 2895. Contracts.
- 2896. — In general.
- 2897. — Public contracts.
- 2898. Property.
- 2899. Financial transactions.
- 2900. Elections.
- 2901. Civil proceedings.
- 2902. — In general.
- 2903. — Limitation of actions.
- 2904. — Costs and fees.
- 2905. Family law.

**92. CONSTITUTIONAL LAW****XXIV. PRIVILEGES OR IMMUNITIES;  
EMOLUMENTS.(Cont'd)**

2906. — In general.  
2907. — Marriage.

**(B) PRIVILEGES AND IMMUNITIES OF CITIZENS  
OF THE UNITED STATES (FOURTEENTH  
AMENDMENT).****1. IN GENERAL.**

2910. In general.  
2911. Entities protected by, or subject to,  
constitutional provision.  
2912. — In general.  
2913. — Corporations or other business  
entities.  
2914. Source or nature of protected rights.  
2915. Reasonableness.  
2916. Police powers; public purpose or wel-  
fare.

**2. PARTICULAR ISSUES AND APPLICATIONS.**

2920. In general.  
2921. Criminal law.  
2922. — In general.  
2923. — Offenses.  
2924. — Proceedings.  
2925. Taxation.  
2926. Trade, business, profession, or occupa-  
tion, regulation of.  
2927. Attorneys.  
2928. Intoxicating liquors.  
2929. Fish and game.  
2930. Labor and employment.  
2931. Public employees and officials.  
2932. Race or national origin discrimination.

**(C) PRIVILEGES AND IMMUNITIES OF CITIZENS  
OF THE SEVERAL STATES (ARTICLE IV).****1. IN GENERAL.**

2935. In general.  
2936. Purpose or object of constitutional pro-  
vision.  
2937. Entities protected by constitutional pro-  
vision.  
2938. — In general.  
2939. — Corporations or other business  
entities.  
2940. — Governmental entities.  
2941. Rights or privileges protected.  
2942. — In general.

**XXIV. PRIVILEGES OR IMMUNITIES;  
EMOLUMENTS.(Cont'd)**

2943. — Fundamental rights.  
2944. Discrimination in general.  
2945. Justification for discrimination or in-  
equality.

**2. PARTICULAR ISSUES AND APPLICATIONS.**

2950. In general.  
2951. Criminal law.  
2952. Taxation.  
2953. Trade, business, profession, or occupa-  
tion, regulation of.  
2954. Attorneys.  
2955. — In general.  
2956. — Bar admission or examination.  
2957. Peddlers and salespersons.  
2958. Insurance.  
2959. Fish and game.  
2960. Civil proceedings.  
2961. — In general.  
2962. — Jurisdiction.  
2963. — Process.

**XXV. CLASS LEGISLATION; DIS-  
CRIMINATION AND CLASSI-  
FICATION IN GENERAL.**

*Equal protection, see XXVI; privileges or immunities,  
see XXIV; special legislation, see STATUTES.*

2970. In general.  
2971. Rights of action and remedies in gener-  
al.  
2972. Race, national origin, or ethnicity.  
2973. Aliens.  
2974. Sex or gender; sexual orientation.  
2975. Age.  
2976. Unit of government, residence, and  
geographic location in general.  
2977. Public improvements.  
2978. Public assistance and benefits.  
*Workers' and unemployment compensation, see  
2981.*  
2979. Trade, business, and professions in gener-  
al.  
2980. Corporations, associations, and organi-  
zations in general.  
2981. Labor and employment in general.  
2982. Public employees and officials.  
2983. Sales of goods.  
2984. Factors.  
2985. Transportation.

**92. CONSTITUTIONAL LAW****XXV. CLASS LEGISLATION; DISCRIMINATION AND CLASSIFICATION IN GENERAL.(Cont'd)**

- 2986. Insurance.
- 2987. Usury laws.
- 2988. Sunday laws.
- 2989. Nuisances.
- 2990. Intellectual property.
- 2991. Criminal law.

**XXVI. EQUAL PROTECTION.****(A) IN GENERAL.****1. IN GENERAL.**

- 3000. In general.

**2. RELATIONSHIP TO SIMILAR PROVISIONS.**

- 3005. In general.
- 3006. Federal/state cognates.

**3. PERSONS OR ENTITIES PROTECTED.**

- 3010. In general.
- 3011. Governmental entities.
- 3012. Corporations and other business entities.
- 3013. Aliens and alien business entities.
- 3014. Prisoners and felons.
- 3015. Children and the unborn.

**4. APPLICABILITY TO GOVERNMENTAL OR PRIVATE ACTION; STATE ACTION.**

- 3020. In general.
- 3021. Branches of state government involved.
- 3022. Local governments.
- 3023. School boards.
- 3024. Federal government.
- 3025. District of Columbia.
- 3026. Territories.
- 3027. Private persons and entities.

**5. SCOPE OF DOCTRINE IN GENERAL.**

- 3030. In general.
- 3031. Limits of doctrine.
- 3032. — In general.
- 3033. — Creation of substantive rights.
- 3034. — Equality of results.
- 3035. — Perfect, exact, or complete equality or uniformity.
- 3036. — Gradual, incremental, or non-comprehensive approach.

**XXVI. EQUAL PROTECTION.(Cont'd)**

- 3037. — Territorial uniformity; application to places, areas, or regions.
- 3038. Discrimination and classification.
- 3039. — In general.
- 3040. — Intentional or purposeful action requirement.
- 3041. — Similarly situated persons; like circumstances.
- 3042. — “Class of one” claims.
- 3043. — Statutes and other written regulations and rules.
- 3044. — Police power; public safety and welfare.
- 3045. Enforcement, application, or administration in general.
- 3046. Judicial rulings.
- 3047. Affirmative action in general.

**6. LEVELS OF SCRUTINY.**

- 3050. In general.
- 3051. Differing levels set forth or compared.
- 3052. Rational basis standard; reasonableness.
- 3053. — In general.
- 3054. — Arbitrary, capricious, or unreasonable action in general.
- 3055. — Similarly situated persons; like circumstances.
- 3056. — “Class of one” claims.
- 3057. — Statutes and other written regulations and rules.
- 3058. — Police power; public safety and welfare.
- 3059. Heightened levels of scrutiny.
- 3060. — In general.
- 3061. — Intermediate scrutiny in general.
- 3062. — Strict scrutiny and compelling interest in general.
- 3063. Particular rights.
- 3064. — In general.
- 3065. — Economic or social regulation in general.
- 3066. — Education.
- 3067. — Privacy, travel, speech, and association.
- 3068. — Voting and political rights.
- 3069. Particular classes.
- 3070. — In general.
- 3071. — Age.

**92. CONSTITUTIONAL LAW****XXVI. EQUAL PROTECTION.(Cont'd)**

- 3072. — Alien status.
- 3073. — Disability and disease, physical or mental.
  - (1). In general.
  - (2). Sex offenders.
- 3074. — Illegitimacy.
- 3075. — Marital status.
- 3076. — Poverty or wealth; indigents and the homeless.
- 3077. — Prisoners, and those charged with or convicted of crimes.
- 3078. — Race, national origin, or ethnicity.
- 3079. — Religion.
- 3080. — Residency.
- 3081. — Sex or gender.
- 3082. — Sexual orientation.

**(B) PARTICULAR CLASSES.****1. AGE.**

- 3085. In general.
- 3086. Civil and personal rights in general.
- 3087. — In general.
- 3088. — Age-based curfews.
- 3089. Property in general.
- 3090. — In general.
- 3091. — Restrictions relating to children and minors.
- 3092. Government property, facilities, and funds.
- 3093. Social security, welfare, and other public payments.
- 3094. Labor, employment, and public officials.
- 3095. — In general.
- 3096. — Hiring.
- 3097. — Compensation and benefits.
- 3098. — Retirement issues.
  - (1). In general.
  - (2). Police and fire personnel.
  - (3). Judges.
- 3099. Education.
- 3100. Elections, voting, and political rights.
- 3101. War and national security.
- 3102. Motor vehicles.
- 3103. Families and children.
- 3104. Juvenile justice.

**XXVI. EQUAL PROTECTION.(Cont'd)**

- 3105. Other particular issues and applications.
- 3106. Criminal law.

**2. ALIENS.**

- 3110. In general.
- 3111. Immigration and naturalization.
- 3112. — In general.
- 3113. — Discrimination between classes of aliens.
  - (1). In general.
  - (2). Country or place of origin.
- 3114. Property in general.
- 3115. Social security, welfare, and other public payments.
- 3116. Taxation.
- 3117. Labor, employment, and public officials.
- 3118. — In general.
- 3119. — Public employees and officials.
- 3120. — Workers' compensation and employers' liability.
- 3121. Education.
- 3122. — In general.
- 3123. — Students.
- 3124. — Employees.
- 3125. Elections, voting, and political rights.
- 3126. Motor vehicles.
- 3127. Tort or financial liabilities.
- 3128. Other particular issues and applications.
- 3129. Criminal law.
- 3130. — In general.
- 3131. — Offenses.
- 3132. — Prosecution.
- 3133. — Sentencing and punishment.
  - (1). In general.
  - (2). Prisons and other confinement.

**3. DISABILITY OR DISEASE, PHYSICAL OR MENTAL.**

- 3140. In general.
- 3141. Civil and personal rights in general.
- 3142. — In general.
- 3143. — Commitment, confinement, or placement in general.
- 3144. Property in general.
- 3145. — In general.
- 3146. — Access issues.

**92. CONSTITUTIONAL LAW****XXVI. EQUAL PROTECTION.(Cont'd)**

- 3147. — Zoning and land use.
- 3148. Government property, facilities, and funds.
- 3149. — In general.
- 3150. — Access issues.
- 3151. Social security, welfare, and other public payments.
- 3152. Taxation.
- 3153. Labor, employment, and public officials.
- 3154. — In general.
- 3155. — Public employees and officials.
- 3156. — Workers' compensation.
- 3157. Education.
- 3158. — In general.
- 3159. — Students.
- 3160. — Employees.
- 3161. — Funding and financial issues.
- 3162. Elections, voting, and political rights.
- 3163. War and national security.
- 3164. Motor vehicles.
- 3165. Families and children.
- 3166. Tort or financial liabilities.
- 3167. Other particular issues and applications.
- 3168. Criminal law.
- 3169. — In general.
- 3170. — Disposition pending trial.
- 3171. — Determination of competency to stand trial.
- 3172. — Disposition after verdict or other determination; prisons.
- 3173. Sex offenders.
- 3174. — In general.
- 3175. — Commitment.
- 3176. — Registration and notice.

**4. ILLEGITIMACY.**

- 3180. In general.
- 3181. Property in general.
- 3182. — In general.
- 3183. — Insurance.
- 3184. — Inheritance.
- 3185. Social security, welfare, and other public payments.
- 3186. Labor, employment, and public officials.
- 3187. — In general.

**XXVI. EQUAL PROTECTION.(Cont'd)**

- 3188. — Compensation, pensions, and benefits.
- 3189. Education.
- 3190. Families and children.
- 3191. — In general.
- 3192. — Paternity determinations and proceedings.
- 3193. — Custody and visitation.
- 3194. — Support.
- 3195. Other particular issues and applications.

**5. MARITAL STATUS.**

- 3200. In general.
- 3201. Property in general.
- 3202. Taxation.
- 3203. Labor, employment, and public officials.
- 3204. Education.
- 3205. Families and children.
- 3206. Other particular issues and applications.

**6. POVERTY OR WEALTH; THE HOMELESS.**

- 3210. In general.
- 3211. Civil and personal rights in general.
- 3212. Property in general.
- 3213. — In general.
- 3214. — Zoning and land use.
- 3215. Government property, facilities, and funds.
- 3216. — In general.
- 3217. — Housing.
- 3218. — Transportation.
- 3219. Labor, employment, and public officials.
- 3220. Education.
- 3221. — In general.
- 3222. — Funding and financing.
- 3223. Elections, voting, and political rights.
- 3224. Motor vehicles.
- 3225. Families and children.
- 3226. Other particular issues and applications.
- 3227. Criminal law.
- 3228. Court and administrative costs or fees; assistance of counsel.



**92. CONSTITUTIONAL LAW****7. STATUS AS PRISONER OR ONE CHARGED  
WITH OR CONVICTED OF CRIME.**

- 3230. In general.
- 3231. Civil and personal rights in general.
- 3232. — In general.
- 3233. — Right to travel.
- 3234. — Right to possess and use firearms.
- 3235. Property in general.
- 3236. Social security, welfare, and other public payments.
- 3237. Labor, employment, and public officials.
- 3238. Education.
- 3239. Elections, voting, and political rights.
- 3240. Motor vehicles.
- 3241. Families and children.
- 3242. Other particular issues and applications.
- 3243. Criminal law.
- 3244. DNA testing and databases.

**8. RACE, NATIONAL ORIGIN, OR ETHNICITY.**

- 3250. In general.
- 3251. Intentional or purposeful action.
- 3252. Affirmative action in general.
- 3253. Civil or administrative proceedings in general.
- 3254. Governments and political subdivisions in general.
- 3255. — In general.
- 3256. — Public improvements and urban renewal.
- 3257. Property in general.
- 3258. — In general.
- 3259. — Covenants and restrictions.
- 3260. — Privately operated facilities.
  - (1). In general.
  - (2). Hotels and other lodging.
  - (3). Restaurants and other providers of food and drink.
  - (4). Recreation and entertainment facilities.
- 3261. — Zoning and land use.
- 3262. Government property, facilities, and funds.
- 3263. — In general.
- 3264. — Publicly supported housing.
- 3265. — Streets and highways.
- 3266. — Transportation.

**XXVI. EQUAL PROTECTION.(Cont'd)**

- 3267. — Recreation and entertainment facilities.
- 3268. Social security, welfare, and other public payments.
- 3269. Taxation.
- 3270. Labor, employment, and public officials.
- 3271. — In general.
- 3272. — Public employees and officials.
- 3273. — Judges, regulation and discipline.
- 3274. — Workers' compensation and employers' liability.
- 3275. Education.
- 3276. — In general.
- 3277. — Private elementary and secondary education.
- 3278. — Public elementary and secondary education.
  - (1). In general.
  - (2). Desegregation and integration in general.
  - (3). School location.
  - (4). Assignment and transfer of students.
  - (5). Busing.
  - (6). Employees.
  - (7). Elections in general.
  - (8). Redistricting and reapportionment.
  - (9). Contracts.
- 3279. — Interscholastic organizations.
- 3280. — Post-secondary institutions.
  - (1). In general.
  - (2). Desegregation and integration in general.
  - (3). Admissions.
  - (4). Loans, scholarships, and grants.
  - (5). Employees.
- 3281. — Athletics.
- 3282. — Trade schools and other miscellaneous educational programs.
- 3283. Elections, voting, and political rights.
- 3284. — In general.
- 3285. — Electoral districts and gerrymandering.
- 3286. War and national security.
- 3287. Contracts.
- 3288. — In general.
- 3289. — Public contracts.

**92. CONSTITUTIONAL LAW****XXVI. EQUAL PROTECTION.(Cont'd)**

- 3290. Trade or business.
- 3291. Motor vehicles.
- 3292. Families and children.
- 3293. Tort or financial liabilities.
- 3294. Juvenile justice.
- 3295. Other particular issues and applications.
- 3296. Criminal law.
- 3297. — In general.
- 3298. — Selective prosecution in general.
- 3299. — Investigation, arrest, and search.
- 3300. — Proceedings.
- 3301. — Sentencing and punishment.
- 3302. — Prisons.
- 3303. — Probation.
- 3304. — Parole.
- 3305. Juries.
- 3306. — In general.
- 3307. — Proportional representation, underrepresentation, or token inclusion.
- 3308. — Method of selection.
  - (1). In general.
  - (2). Jury lists.
- 3309. — Peremptory challenges.
- 3310. — Grand juries.

**9. RELIGION.**

- 3315. In general.
- 3316. Property in general.
- 3317. — In general.
- 3318. — Zoning and land use.
- 3319. Government property, facilities, and funds.
- 3320. Social security, welfare, and other public payments.
- 3321. Taxation.
- 3322. Labor, employment, and public officials.
- 3323. — In general.
- 3324. — Public employees and officials.
- 3325. Education.
- 3326. — In general.
- 3327. — Access issues.
- 3328. — Students.
- 3329. — Employees.
- 3330. Elections, voting, and political rights.
- 3331. War and national security.
- 3332. Trade or business.

**XXVI. EQUAL PROTECTION.(Cont'd)**

- 3333. — In general.
  - 3334. — Business closure; Sunday laws.
  - 3335. Families and children.
  - 3336. Other particular issues and applications.
  - 3337. Criminal law.
  - 3338. — In general.
  - 3339. — Controlled substances.
  - 3340. — Proceedings.
  - 3341. — Sentencing and punishment.
    - (1). In general.
    - (2). Prisons and other confinement.
  - 3342. Juries.
- 10. RESIDENCY OR DURATION THEREOF.**
- 3350. In general.
  - 3351. Governments and political subdivisions; annexation.
  - 3352. Property in general.
  - 3353. Government property, facilities, and funds.
  - 3354. Social security, welfare, and other public payments.
  - 3355. Taxation.
  - 3356. Labor, employment, and public officials.
  - 3357. — In general.
  - 3358. — Public employees and officials.
    - (1). In general.
    - (2). Police and firefighters.
  - 3359. Education.
  - 3360. — In general.
  - 3361. — Students in general.
  - 3362. — Tuition and fees.
  - 3363. — Employees.
  - 3364. Elections, voting, and political rights.
  - 3365. — In general.
  - 3366. — Qualification of candidates.
  - 3367. — Qualification of voters.
  - 3368. Contracts, private and public.
  - 3369. Trade or business.
  - 3370. — In general.
  - 3371. — Licenses and regulation in general.
  - 3372. — Attorneys.
  - 3373. Animals and plants; fish and game.
  - 3374. Motor vehicles.
  - 3375. Families and children.

**92. CONSTITUTIONAL LAW****XXVI. EQUAL PROTECTION.(Cont'd)**

- 3376. Other particular issues and applications.
- 3377. Criminal law.
- 3378. Juries.

**11. SEX OR GENDER.**

- 3380. In general.
- 3381. Affirmative action in general.
- 3382. Harassment in general.
- 3383. Civil or administrative proceedings in general.
- 3384. Property in general.
- 3385. Government property, facilities, and funds.
- 3386. Social security, welfare, and other public payments.
- 3387. Taxation.
- 3388. Labor, employment, and public officials.
- 3389. — In general.
- 3390. — Public employees and officials in general.
- 3391. — Harassment.
- 3392. — Workers' compensation.
- 3393. Education.
- 3394. — In general.
- 3395. — Elementary and secondary education.
- 3396. — Post-secondary institutions.
- 3397. — Single-sex institutions.
- 3398. — Athletics.
- 3399. War and national security.
- 3400. Contracts.
- 3401. — In general.
- 3402. — Public contracts.
- 3403. Trade or business.
- 3404. — In general.
- 3405. — Licenses in general.
- 3406. — Attorneys and judges.
- 3407. Motor vehicles.
- 3408. Families and children.
- 3409. — In general.
- 3410. — Divorce and alimony.
- 3411. — Custody and visitation.
- 3412. — Child support.
- 3413. Tort or financial liabilities.
- 3414. Juvenile justice.

**XXVI. EQUAL PROTECTION.(Cont'd)**

- 3415. Other particular issues and applications.
- 3416. Criminal law.
- 3417. — In general.
- 3418. — Investigation, arrest, or search; selective prosecution.
- 3419. — Prosecution, sentence, and punishment.
- 3420. — Prisons and parole.
- 3421. Pregnancy-related discrimination and issues.
- 3422. — In general.
- 3423. — Criminal law.
- 3424. — Labor and employment; occupations.
- 3425. — Abortion and birth control.
- 3426. Juries.
- 3427. — In general.
- 3428. — Peremptory challenges.
- 3429. — Grand juries.

**12. SEXUAL ORIENTATION.**

- 3430. In general.
- 3431. Social security, welfare, and other public payments.
- 3432. Labor, employment, and public officials.
- 3433. Education.
- 3434. War and national security.
- 3435. Environment and health.
- 3436. Families and children.
- 3437. — In general.
- 3438. — Marriage and civil unions.
- 3439. — Adoption.
- 3440. — Custody.
- 3441. Other particular issues and applications.
- 3442. Criminal law.
- 3443. — In general.
- 3444. — Offenses and defenses.
- 3445. — Prisons and other confinement.
- 3446. Juries.

**(C) CIVIL ACTIONS AND PROCEEDINGS.**

- 3450. In general.
- 3451. Choice of law.
- 3452. Jurisdiction.
- 3453. Venue.

**92. CONSTITUTIONAL LAW****XXVI. EQUAL PROTECTION.(Cont'd)**

- 3454. Limitation of actions.
- 3455. Parties.
- 3456. Process or notice.
- 3457. Pleading.
- 3458. Discovery.
- 3459. Provisional remedies.
- 3460. Pretrial proceedings.
- 3461. Trial.
- 3462. — In general.
- 3463. — Evidence.
- 3464. — Witnesses.
- 3465. Judgment and execution.
- 3466. Appeal or other proceedings for review.
- 3467. Costs and fees.

**(D) ADMINISTRATIVE AGENCIES AND PROCEEDINGS IN GENERAL.**

- 3470. In general.
- 3471. Rules and regulations.
- 3472. Hearings and adjudications.
- 3473. Judicial review.

**(E) PARTICULAR ISSUES AND APPLICATIONS.****1. IN GENERAL.**

- 3475. In general.
- 3476. Freedom of speech and press.
- 3477. Right to travel.
- 3478. Right to possess and use firearms.  
*Gun dealers and shows, see ¶3690.*

**2. GOVERNMENTS AND POLITICAL SUBDIVISIONS IN GENERAL.**

- 3480. In general.
- 3481. Population-based distinctions.
- 3482. Incorporation, organization, and dissolution.
- 3483. Territorial extent and annexation.
- 3484. Public improvements and urban renewal.
- 3485. — In general.
- 3486. — Voter approval and bonds.
- 3487. — Assessments and special taxes.
- 3488. Other particular issues and applications.

**3. PROPERTY IN GENERAL.**

- 3495. In general.
- 3496. Real property in general.
- 3497. Housing in general.

**XXVI. EQUAL PROTECTION.(Cont'd)**

- 3498. Building and safety codes.
- 3499. Eminent domain.
- 3500. — In general.
- 3501. — Proceedings.
- 3502. — Compensation, damages, and relocation assistance.
- 3503. Forfeitures and proceedings therefor.
- 3504. Landlord and tenant issues.
- 3505. — In general.
- 3506. — Rent control.
- 3507. Mineral, oil, and gas rights.
- 3508. Nuisances and nuisance abatement.
- 3509. Waters and wetlands.  
*Public water supply, see ¶3532.*
- 3510. Will, probate, inheritance, and dower issues.
- 3511. Zoning and land use.
- 3512. — In general.
- 3512.5. — Selective enforcement.
- 3513. — Signs and billboards.
- 3514. — Adult uses.
- 3515. — Proceedings.
- 3517. Other particular issues and applications.

**4. GOVERNMENT PROPERTY, FACILITIES, AND FUNDS.**

- 3520. In general.
- 3521. Control and use in general.  
*Free speech issues, see ¶3476.*
- 3522. Sale or lease in general.
- 3523. Public housing.
- 3524. Transportation.
- 3525. — In general.
- 3526. — Roads, streets, highways, and sidewalks.
  - (1). In general.
  - (2). Construction and maintenance.
  - (3). Billboards and signs.
  - (4). Parking.
  - (5). Non-transportation use; parades and demonstrations.
- 3527. — Bridges.
- 3528. — Airports.
- 3529. Public funds; grants and loans.
- 3530. Public services.
- 3531. — In general.
- 3532. — Sewer, water, and drains.
- 3533. — Garbage collection.

**92. CONSTITUTIONAL LAW****XXVI. EQUAL PROTECTION.(Cont'd)**

3534. Other particular issues and applications.

**5. SOCIAL SECURITY, WELFARE, AND OTHER PUBLIC PAYMENTS.**

3540. In general.  
 3541. Aid to children and families.  
 3542. Food stamps and programs.  
 3543. Social security.  
 3544. — In general.  
 3545. — Old age and survivor benefits.  
 3546. — Supplemental security income in general.  
 3547. — Disability benefits.  
 3548. Medical assistance.  
 3549. — In general.  
 3550. — Medicaid.  
 3551. — Medicare.  
 3552. — Abortion funding.  
 3553. Unemployment compensation.  
 3554. Other particular issues and applications.

**6. TAXATION.**

3560. In general.  
 3561. Property taxes.  
 3562. — In general.  
 3563. — Exemptions.  
 3564. — Assessment and collection.  
 3565. Transfer taxes.  
 3566. Franchise taxes.  
 3567. Excise taxes.  
 3568. Premium taxes.  
 3569. Gift taxes.  
 3570. Estate and inheritance taxes.  
 3571. Income taxes.  
 3572. — In general.  
 3573. — Exemptions.  
 3574. — Assessment and collection.  
 3575. Employment taxes.  
 3576. Sales and use taxes.  
 3577. Gross receipts taxes.  
 3578. Hotel and motel taxes.  
 3579. Severance taxes.  
 3580. Other particular issues and applications.

**7. LABOR, EMPLOYMENT, AND PUBLIC OFFICIALS.**

3585. In general.  
 3586. Right to choose and pursue profession or employment in general.  
 3587. Employment in general.  
 3588. — In general.  
 3589. — Hiring and advancement.  
 3590. — Removal, non-renewal, and discipline.  
 3591. — Compensation, pensions, and benefits.  
 3592. Public employees and officials.  
 3593. — In general.  
 3594. — Hiring and advancement.  
 3595. — Removal, recall, and discipline.  
 3596. — Compensation, pensions, and benefits.  
 3597. — Restrictions on political activity.  
 3598. Labor organizations and collective bargaining.  
 3599. — In general.  
 3600. — Dues and check-offs.  
 3601. Workplace safety regulation.  
 3602. Wage and hour regulation.  
 3603. Workers' compensation and employers' liability.  
 3604. Other particular issues and applications.

**8. EDUCATION.**

3610. In general.  
 3611. Elementary and secondary education.  
 3612. — In general.  
 3613. — School boards in general.  
     (1). In general.  
     (2). Election, tenure, and removal.  
 3614. — School funding and financing; taxation.  
 3615. — Establishment and closing of schools.  
 3616. — Control, use, and disposition of property; access issues.  
 3617. — Students.  
     (1). In general.  
     (2). Discipline in general.  
     (3). Dress and grooming issues.  
     (4). Dismissal, suspension, or expulsion.  
 3618. — Employees.  
     (1). In general.

**92. CONSTITUTIONAL LAW****XXVI. EQUAL PROTECTION.(Cont'd)**

- (2). Licensure and certification.
- (3). Hiring and tenure.
- (4). Compensation and benefits.
- (5). Discharge or non-renewal.
- 3619. — Athletics.
- 3620. — Home schooling.
- 3621. Post-secondary institutions.
- 3622. — In general.
- 3623. — Governing boards.
- 3624. — Funding and financing issues.
- 3625. — Control, use, and disposition of property; access issues.
- 3626. — Students.
  - (1). In general.
  - (2). Tuition and fees.
  - (3). Scholarships, grants, and loans.
  - (4). Discipline in general.
  - (5). Dismissal, suspension, or expulsion.
  - (6). Fraternities or sororities.
- 3627. — Employees.
  - (1). In general.
  - (2). Hiring and tenure.
  - (3). Compensation and benefits.
  - (4). Discharge or non-renewal.
- 3628. — Athletics.
- 3629. Trade schools and other miscellaneous educational programs.
- 3630. Other particular issues and applications.

**9. ELECTIONS, VOTING, AND POLITICAL RIGHTS.**

- 3635. In general.
- 3636. Political parties in general.
- 3637. Contributions and expenditures.
- 3638. Public funding of campaigns.
- 3639. Nomination of candidates.
- 3640. — In general.
- 3641. — Political conventions.
- 3642. — Primary elections.
- 3643. Qualifications of candidates.
- 3644. — In general.
- 3645. — Property ownership.
- 3646. — Payment of fees or taxes.
- 3647. Qualifications of voters.
- 3648. — In general.
- 3649. — Property ownership.
- 3650. — Payment of fees or taxes.

**XXVI. EQUAL PROTECTION.(Cont'd)**

- 3651. Conduct of elections.
- 3652. — In general.
- 3653. — Ballot access.
- 3654. — Ballots in general.
- 3655. — Absentee ballots.
- 3656. Equality of voting power (one person, one vote).
- 3657. — In general.
- 3658. — Electoral districts.
  - (1). In general.
  - (2). Power and duty to redistrict and reapportion.
  - (3). Redistricting and reapportionment in general.
  - (4). Equality of representation; discrimination.
  - (5). Gerrymandering in general.
  - (6). Population deviation.
  - (7). Boundaries of political subdivisions, consideration of.
  - (8). Multi-member or flatorial districts.
  - (9). Bicameral legislatures.
  - (10). Fractional or weighted voting; proportional representation.
- 3659. — Bodies, officers, and elections subject to limitations.
- 3660. — Political parties and nominations.
- 3661. Other particular issues and applications.

**10. WAR AND NATIONAL SECURITY.**

- 3665. In general.
- 3666. Selective service and the draft.
- 3667. Offenses and courts-martial.
- 3668. Veterans' benefits.
- 3669. Other particular issues and applications.

**11. CONTRACTS.**

- 3675. In general.
- 3676. Private contracts.
- 3677. Public contracts.

**12. TRADE OR BUSINESS.**

- 3680. In general.
- 3681. Licenses and regulation.
- 3682. — In general.
- 3683. — Accountants.

**92. CONSTITUTIONAL LAW****XXVI. EQUAL PROTECTION.(Cont'd)**

- 3684. — Attorneys and paralegals.
  - (1). In general.
  - (2). Admission and examination.
  - (3). Discipline.
- 3685. — Barbers, beauticians, and cosmetologists.
- 3686. — Carriers and public utilities; railroads.
- 3687. — Chain stores.
- 3688. — Drugs, medicines, and vaccines.
- 3689. — Financial institutions and transactions.
- 3690. — Firearms dealers and shows.  
*Right to bear arms in general, see ¶3478.*
- 3691. — Funeral directors, cemeteries, and related occupations.
- 3692. — Gambling and gaming.
- 3693. — Hotels, motels, and other lodging.
- 3694. — Insurance.
- 3695. — Intoxicating liquors.
- 3696. — Health care.
- 3697. — Mining and excavation; oil and gas.
- 3698. — Public amusement and entertainment.
- 3699. — Real estate brokers and agents.
- 3700. — Restaurants; food and drink.
- 3701. — Sales and marketing.
- 3702. — Securities and commodities transactions.
- 3703. — Other particular occupations and businesses.
- 3704. Unfair trade practices.
- 3705. Consumer regulation in general.
- 3706. Antitrust regulation; monopolies.
- 3707. Intellectual property.
- 3708. — In general.
- 3709. — Copyrights.
- 3710. — Trademarks and trade names.
- 3711. Other particular issues and applications.

**13. ANIMALS AND PLANTS, REGULATION OF.**

- 3715. In general.
- 3716. Domestic animals and pets.
- 3717. Game regulations and hunting.
- 3718. Fish and fishing.
- 3719. Other particular issues and applications.

**14. ENVIRONMENT AND HEALTH.**

- 3720. In general.
- 3721. Hazardous waste and substances.
- 3722. Smoking and tobacco regulation.
- 3723. Other particular issues and applications.

**15. MOTOR VEHICLES.***Automobile accidents, see ¶3756.*

- 3725. In general.
- 3726. Licensing and registration.
- 3727. — In general.
- 3728. — Taxes and fees.
- 3729. Drivers' licenses.
- 3730. — In general.
- 3731. — Revocation, suspension, or reinstatement.
- 3732. Financial responsibility and insurance requirements.
- 3733. Alcohol and drug-related issues; testing.
- 3734. Other particular issues and applications.

**16. FAMILIES AND CHILDREN.**

- 3735. In general.
- 3736. Marriage and divorce in general.
- 3737. Property issues.
- 3738. Child custody, visitation, and support.
- 3739. Termination of parental rights.
- 3740. Adoption.
- 3741. Juvenile justice.
- 3742. Other particular issues and applications.

**17. TORT OR FINANCIAL LIABILITIES.**

- 3745. In general.
- 3746. Damages in general.
- 3747. Immunity in general.
- 3748. Public care, liability for.
- 3749. Liens, mortgages, and security interests.
- 3750. Personal injuries.
- 3751. — In general.
- 3752. — Immunity in general.
- 3753. — Wrongful death and survival.
- 3754. — Medical malpractice.
- 3755. — Airplane accidents.
- 3756. — Motor vehicle accidents.
- 3757. Injuries to property.
- 3758. Penalties and sanctions in general.

**92. CONSTITUTIONAL LAW****XXVI. EQUAL PROTECTION.(Cont'd)**

- 3759. Punitive or multiple damages.
- 3760. Interest.
- 3761. Other particular issues and applications.

**18. PRIVACY AND SEXUAL MATTERS.**

- 3765. In general.
- 3766. Birth control and abortion.
- 3767. Death and suicide.

**19. OTHER PARTICULAR ISSUES AND APPLICATIONS.**

- 3770. In general.
- 3771. Alternative dispute resolution.
- 3772. Bankruptcy.
- 3773. Contempt.
- 3774. Habeas corpus.
- 3775. Other particular matters.

**(F) CRIMINAL LAW.**

- 3780. In general.
- 3781. Creation and classification of offenses.
- 3782. Selective enforcement in general.
- 3783. Police action or inaction.
- 3784. — In general.
- 3785. — Investigation in general; searches.
- 3786. — Failure to investigate.
- 3787. — Arrests and investigatory stops.
- 3788. Pretrial detention.
- 3789. Decision to prosecute; discretion.
- 3790. Charging instrument.
- 3791. Grand jury.
- 3792. Double jeopardy.
- 3793. Limitations.
- 3794. Extradition and detainers.
- 3795. Pretrial proceedings in general.
- 3796. Arraignment.
- 3797. Bail.
- 3798. Pleas.
- 3799. Assistance of counsel in general.
- 3800. Disclosure and discovery.
- 3801. Evidence and witnesses.
- 3802. Trial.
- 3803. — In general.
- 3804. — Judicial assignment; recusal.
- 3805. — Time for trial; speedy trial issues.
- 3806. — Instructions.

**XXVI. EQUAL PROTECTION.(Cont'd)**

- 3807. Sentencing and punishment.
- 3808. — In general.
- 3809. — Extent of punishment.
- 3810. — Assistance of counsel.
- 3811. — Capital punishment; death penalty.
- 3812. Post-conviction relief.
- 3813. — In general.
- 3814. — Assistance of counsel.
- 3815. Appeal or other proceedings for review.
- 3816. — In general.
- 3817. — Assistance of counsel.
- 3818. — Proportionality review.
- 3819. Probation or suspension of sentence.
- 3820. Pardon or clemency.
- 3821. Parole.
- 3822. Prisons.
- 3823. — In general.
- 3824. — Credits.
- 3825. — Discipline.
- 3826. Criminal records.
- 3827. Other particular issues and applications.

**(G) JURIES.**

- 3830. In general.
- 3831. Method of selection.
- 3832. Peremptory challenges.
- 3833. Grand juries.

**XXVII. DUE PROCESS.****(A) IN GENERAL.**

- 3840. In general.
- 3841. Fundamental principles of justice.
- 3842. Law of the land.
- 3843. Relationship to other sources of law.
- 3844. — In general.
- 3845. — Tort law.
- 3846. Relationship to historical or common practice.
- 3847. Relationship to other constitutions.
- 3848. Relationship to other constitutional provisions; incorporation.
- 3849. — In general.
- 3850. — Bill of Rights in general.
- 3851. — First Amendment.
- 3852. — Second Amendment.
- 3853. — Third Amendment.



**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.(Cont'd)**

- 3854. — Fourth Amendment.
- 3855. — Fifth Amendment.
- 3856. — Sixth Amendment.
- 3857. — Seventh Amendment.
- 3858. — Eighth Amendment.
- 3859. — Ninth Amendment.
- 3860. — Tenth Amendment.
- 3861. Relationship to equal protection guarantee.

**(B) PROTECTIONS PROVIDED AND DEPRIVATIONS PROHIBITED IN GENERAL.**

- 3865. In general.
- 3866. Fairness in general.
- 3867. Procedural due process in general.
- 3868. Rights, interests, benefits, or privileges involved in general.
- 3869. — In general.
- 3870. — Fundamental rights.
- 3871. — Vested rights.
- 3872. — Life.
- 3873. — Liberties and liberty interests.
- 3874. — Property rights and interests.  
*Particular issues and applications, see other lines.*
  - (1). In general.
  - (2). Source of right or interest.
  - (3). Benefits, rights and interests in.
- 3875. Factors considered; flexibility and balancing.
- 3876. Arbitrariness.
- 3877. Reasonableness, rationality, and relationship to object.
- 3878. Notice and hearing.
- 3879. — In general.
- 3880. — Impartiality.
- 3881. — Notice.
- 3882. — Evidence in general; disclosure.
- 3883. — Presumptions, inferences, and burden of proof.
- 3884. — Degree or standard of proof.
- 3885. — Witnesses; confrontation and cross-examination.
- 3886. — Counsel.
- 3887. — Decision or determination.
- 3888. — Review.
- 3889. Legislative procedure.
- 3890. — In general.
- 3891. — Local government.
- 3892. Substantive due process in general.

**XXVII. DUE PROCESS.(Cont'd)**

- 3893. — In general.
- 3894. — Rights and interests protected; fundamental rights.
- 3895. — Reasonableness, rationality, and relationship to object.
- 3896. — Egregiousness; “shock the conscience” test.
- 3897. Discrimination and classification.
- 3898. — In general.
- 3900. — Reasonableness, rationality, and relationship to object.
- 3901. Levels of scrutiny; strict or heightened scrutiny.
- 3902. Police power, relationship to due process.
- 3903. Economic rights and regulation.
- 3904. Legislative jurisdiction; extraterritoriality.
- 3905. Certainty and definiteness; vagueness.
- 3906. Overbreadth.
- 3907. Retrospective laws and decisions; change in law.
- 3908. Mental state.
- 3909. — In general.
- 3910. — Purpose or intent.
- 3911. — Negligence, recklessness, or indifference.
- 3912. Duration and timing of deprivation; pre- or post-deprivation remedies.

**(C) PERSONS AND ENTITIES PROTECTED.**

- 3920. In general.
- 3921. Non-citizens; aliens.
- 3922. Children and minors.
- 3923. Unborn children; fetuses.
- 3924. Prisoners, detainees, and convicts.
- 3925. Armed services personnel.
- 3926. Organizations and associations.
- 3927. Business organizations; corporations.
- 3928. Government entities.
- 3929. — In general.
- 3930. — Employees and officials.
- 3931. — Foreign governments.
- 3932. Other particular persons and entities.

**(D) APPLICABILITY TO GOVERNMENTAL OR PRIVATE CONDUCT; STATE ACTION.**

- 3935. In general.
- 3936. Federal government.

**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.**(Cont'd)

- 3937. State government.
- 3938. Local government.
- 3939. District of Columbia.
- 3940. Territories.
- 3941. Non-government entities and individuals, actions of.
- 3942. Government approval of or acquiescence in private conduct.
- 3943. Creditors' remedies.
- 3944. — In general.
- 3945. — Foreclosures.

**(E) CIVIL ACTIONS AND PROCEEDINGS.**

- 3950. In general.
  - 3951. Courts in general.
  - 3952. Actions and lawsuits in general.
  - 3953. Notice and hearing in general.
  - 3954. Course and conduct of proceedings in general.
  - 3955. Bias and prejudice in general.
  - 3956. Access to courts; right to seek remedy.
  - 3957. — In general.
  - 3958. — Particular persons or circumstances.
- Prisoners, see ¶4827.*
- 3959. — Conditions precedent.
  - 3960. — Vexatious or frequent litigants.
  - 3961. Jurisdiction and venue.
  - 3962. — In general.
  - 3963. — Personal jurisdiction in general.
  - 3964. — Non-residents in general.
  - 3965. — Particular parties or circumstances.
  - (1). In general.
  - (2). Organizations and associations.
  - (3). Business, business organizations, and corporations in general.
  - (4). Manufacture, distribution, and sale.
  - (5). Services and service providers.
  - (6). Insurers and insurance.
  - (7). Banks, banking, finance, and securities.
  - (8). Media and publishing.
  - (9). Non-profit, charitable, and educational organizations.
  - (10). Representatives of organizations; officers, agents, and employees.

**XXVII. DUE PROCESS.**(Cont'd)

- (11). Public entities, employees, and officials.
- 3966. — Jurisdiction of property; in rem and quasi in rem jurisdiction.
- 3967. — Determination; notice and hearing.
- 3968. — Consent; forum-selection clauses.
- 3969. — Change of venue.
- 3970. What law governs; choice of law.
- 3971. Time for proceedings; limitation or suspension of remedy.
- 3972. Parties.
- 3973. Process or other notice.
- 3974. — In general.
- 3975. — Form and adequacy.
- 3976. — Representatives and agents.
- 3977. — Non-residents.
- (1). In general.
- (2). Representatives and agents.
- 3978. — Proceedings within action or lawsuit, notice of.
- 3979. Ex parte proceedings or communications.
- 3980. Class actions.
- 3981. — In general.
- 3982. — What law governs; choice of law.
- 3983. — Compromise and settlement.
- 3984. Pleading.
- 3985. Disclosure and discovery.
- 3986. — In general.
- 3987. — Sanctions.
- 3988. Continuance.
- 3989. Dismissal.
- 3990. Jury.
- 3991. Trial.
- 3992. — In general.
- 3993. — Time of trial.
- 3994. — Course and conduct of trial.
- 3995. — Questions of law or fact.
- 3996. — Instructions.
- 3997. — Verdict and findings.
- 3998. — New trial.
- 3999. Evidence and witnesses.
- 4000. — In general.
- 4001. — Presumptions, inferences, and burden of proof.
- 4002. — Admissibility.

**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.**(Cont'd)

- 4003. — Witnesses; confrontation and cross-examination.
- 4004. — Opinion evidence; experts and expert testimony.
- 4005. — Weight and sufficiency of evidence.
- 4006. — Degree or standard of proof.
- 4007. Judgment or other determination.
- 4008. — In general.
- 4009. — Confession or consent.
- 4010. — Default.
- 4011. — Summary judgment.
- 4012. — Conclusiveness.
- 4013. — Enforcement.
  - (1). In general.
  - (2). Suspension and revival.
  - (3). Attachment, execution, and garnishment; supplementary proceedings.
  - (4). Income or wages, enforcement against.
- 4014. — Foreign judgments.
- 4015. — Interest.
- 4016. Appeal or other proceedings for review.
- 4017. Costs and fees.
- 4018. — In general.
- 4019. — Fees.
- 4020. — Indigents; proceedings in forma pauperis.
- 4021. — Appellate costs and fees.

**(F) ADMINISTRATIVE AGENCIES AND PROCEEDINGS IN GENERAL.**

- 4025. In general.
- 4026. Rules and regulations.
- 4027. Hearings and adjudications.
- 4028. Judicial review.

**(G) PARTICULAR ISSUES AND APPLICATIONS.****1. IN GENERAL.**

- 4030. In general.
- 4031. Civil rights in general.
- 4032. Dignity, safety, and happiness.
- 4033. Religion and conscience.
- 4034. Speech, press, assembly, and petition.
- 4035. Association.
- 4036. Travel and movement.
- 4037. Personal and bodily rights in general.

**XXVII. DUE PROCESS.**(Cont'd)

- 4038. Language.
- 4039. Indians.
  - Indian property, lands, and reservations, see ¶4072.*
- 4040. Reputation; defamation.
- 4041. Restraint, commitment, and detention.
- 4042. Threats, harassment, and use of force.
- 4043. Malicious prosecution; abuse of process.
- 4044. Retaliation.
- 4045. Discipline.
- 4046. Benefits, denial of.
- 4047. Duty to protect; failure to act.
- 4048. — In general.
- 4049. — Custody or restraint; special relationship.
- 4050. — Creation of danger or risk.

**2. GOVERNMENTS AND POLITICAL SUBDIVISIONS IN GENERAL.**

- 4055. In general.
- 4056. Creation, alteration, and regulation.
- 4057. Public improvements and urban renewal.
- 4058. Assessments and special taxes.
- 4059. — In general.
- 4060. — Apportionment according to area, frontage, or valuation.
- 4061. — Notice and hearing.
- 4062. — Provisions as to objections and determination of validity.
- 4063. — Reassessment.
- 4064. — Issuance of bonds.
- 4065. — Provisions for enforcement.
- 4066. — Personal liability.
- 4067. Public records or information.
- 4068. Public or national emergency.

**3. PROPERTY IN GENERAL.**

- 4070. In general.
- 4071. Real property in general.
- 4072. Indian property and lands; reservations.
- 4073. Housing in general.
- 4074. Building and safety codes.
- 4075. Eminent domain.
- 4076. — In general.
- 4077. — Proceedings.
- 4078. Forfeitures and proceedings therefor.
- 4079. Landlord and tenant.

**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.(Cont'd)**

- 4080. — In general.
- 4081. — Licenses and permits.
- 4082. — Rent control.
- 4083. Eviction and proceedings therefor.
- 4084. Mineral, oil, and gas rights.
- 4085. Nuisances and nuisance abatement.
- 4086. Water.
- 4087. Wills, trusts, probate, inheritance, and dower.
- 4088. — In general.
- 4089. — Proceedings.
- 4090. Abandoned, lost, or unclaimed property; escheat.
- 4091. Zoning and land use.
- 4092. — In general.
- 4093. — Particular issues and applications.
- 4094. — Signs and billboards.
- 4095. — Adult-oriented uses.
- 4096. — Proceedings and review.
- 4097. Destruction of property.

**4. GOVERNMENT PROPERTY, FACILITIES, AND FUNDS.**

- 4100. In general.
- 4101. Control and use in general.
- 4102. Sale or lease in general.
- 4103. Transportation.
- 4104. — In general.
- 4105. — Streets, highways, and sidewalks.
  - (1). In general.
  - (2). Construction and maintenance.
  - (3). Billboards and signs.
  - (4). Parking and towing.
  - (5). Non-transportation use; parades and demonstrations.
- 4106. — Bridges.
- 4107. — Airports.
- 4108. Public funds; grants and loans.
- 4109. Public services.
- 4110. — In general.
- 4111. — Emergency or protective services.
- 4112. Public housing.

**5. SOCIAL SECURITY, WELFARE, AND OTHER PUBLIC PAYMENTS.**

- 4115. In general.
- 4116. Proceedings in general.
- 4117. Aid to children and families.
- 4118. Food stamps and programs.

**XXVII. DUE PROCESS.(Cont'd)**

- 4119. Social security.
- 4120. — In general.
- 4121. — Old age and survivor benefits.
- 4122. — Supplemental security income in general.
- 4123. — Disability benefits.
- 4124. Medical assistance.
- 4125. — In general.
- 4126. — Medicaid.
- 4127. — Medicare.
- 4128. — Abortion funding.
- 4129. Unemployment compensation.
- 4130. Other particular issues and applications.

**6. TAXATION.**

- 4135. In general.
- 4136. Property taxes.
- 4137. — In general.
- 4138. — Assessment and collection.
  - (1). In general.
  - (2). Notice and hearing.
  - (3). Forfeitures and penalties.
- 4139. Transfer taxes.
- 4140. Franchise taxes.
- 4141. Excise taxes.
- 4142. Gift, inheritance, and estate taxes.
- 4143. Income taxes.
- 4144. Employment taxes.
- 4145. Sales and use taxes.
- 4146. Gross receipts taxes.
- 4147. Hotel and motel taxes.
- 4148. Tax sales and proceedings thereon.
- 4149. Federal taxes; internal revenue.
- 4150. Customs duties.

**7. LABOR, EMPLOYMENT, AND PUBLIC OFFICIALS.**

- 4155. In general.
- 4156. Rights and interests protected in general.
- 4157. Right to choose or pursue profession or occupation in general.
- 4158. Deprivations and adverse employment actions in general.
- 4159. Notice, hearing, proceedings, and review in general.
- 4160. Reputational interests in general, protection and deprivation of.

**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.**(Cont'd)

- 4161. — In general.
- 4162. — Termination or discharge.
- 4163. Public employment relationships.
- 4164. — In general.
- 4165. — Rights and interests protected in general.
  - (1). In general.
  - (2). Particular positions.
- 4166. — Conduct and control; deprivations and adverse employment actions.
  - (1). In general.
  - (2). Particular issues and applications.
- 4167. — Hiring or appointment.
- 4168. — Discipline.
- 4169. — Promotion, demotion, assignment, and transfer.
- 4170. — Compensation, pensions, and benefits.
- 4171. — Termination or discharge.
- 4172. — Notice and hearing; proceedings and review.
  - (1). In general.
  - (2). Hiring or appointment.
  - (3). Discipline.
  - (4). Promotion, demotion, assignment, and transfer.
  - (5). Compensation, pensions, and benefits.
  - (6). Termination or discharge.
  - (7). Other particular proceedings.
- 4173. — Reputational interests, protection and deprivation of.
  - (1). In general.
  - (2). Particular cases.
  - (3). Termination or discharge.
  - (4). Notice and hearing; proceedings and review.
- 4174. Elected officials.
- 4175. Judges and judicial officers or employees.
- 4176. Regulation of employment.
- 4177. — In general.
- 4178. — Employment discrimination laws.
- 4179. — Wage and hour regulation.
- 4180. — Health and safety regulation.
- 4181. — Pensions and benefits, regulation of.

**XXVII. DUE PROCESS.**(Cont'd)

- 4182. — Other particular laws and regulations.
- 4183. Labor relations; labor organizations and collective bargaining.
- 4184. — In general.
- 4185. — Notice and hearing; proceedings and review.
- 4186. Workers' compensation and employers' liability.
- 4187. Employment of physicians; hospital staff privileges.
- 4188. National security issues.

**8. EDUCATION.**

- 4190. In general.
- 4191. School districts.
- 4192. School boards.
- 4193. Establishment and closing of schools.
- 4194. Administration of schools; property, contracts, and liabilities.
- 4195. School funding and financing; taxation.
- 4196. Employment relationships.
- 4197. — In general.
- 4198. — Rights and interests protected in general.
- 4199. — Conduct and control; deprivations and adverse employment actions.
- 4200. — Termination or discharge.
- 4201. — Tenure.
- 4202. — Notice and hearing; proceedings and review.
- 4203. — Reputational interests, protection and deprivation of.
- 4204. Students.
- 4205. — In general.
- 4206. — Eligibility, admission, and placement.
- 4207. — Academics, curriculum, and instruction.
- 4208. — Extracurricular activities.
- 4209. — Conduct and control.
  - (1). In general.
  - (2). Dress and grooming.
  - (3). Discipline, suspension, or expulsion.
- 4210. — Use of force; assault, abuse, and harassment.
- 4211. — Duty to protect; failure to act.

**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.**(Cont'd)

- 4212. — Notice and hearing; proceedings and review.
  - (1). In general.
  - (2). Disciplinary proceedings.
- 4213. Disabled students.
- 4214. — In general.
- 4215. — Notice and hearing; proceedings and review.
- 4216. Private schools.
- 4217. Home schooling.
- 4218. Post-secondary education.
- 4219. — In general.
- 4220. — Governing bodies and officials.
- 4221. — Administration; property, contracts, and liabilities.
- 4222. — Funding and financing.
- 4223. — Employment relationships.
  - (1). In general.
  - (2). Rights and interests protected in general.
  - (3). Conduct and control; deprivations and adverse employment actions.
  - (4). Termination or discharge.
  - (5). Tenure.
  - (6). Notice and hearing; proceedings and review.
  - (7). Reputational interests, protection and deprivation of.
- 4224. — Students.
  - (1). In general.
  - (2). Eligibility and admission; academics, curriculum, and instruction.
  - (3). Tuition and fees; scholarships, grants, and loans.
  - (4). Extracurricular activities.
  - (5). Conduct and control.
  - (6). — In general.
  - (7). — Discipline, suspension, or expulsion.
  - (8). Use of force; assault, abuse, and harassment.
  - (9). Duty to protect; failure to act.
  - (10). Notice and hearing; proceedings and review.
  - (11). — In general.
  - (12). — Disciplinary proceedings.

**XXVII. DUE PROCESS.**(Cont'd)

- 4225. Trade schools and other miscellaneous educational programs.
- 4226. Interscholastic associations.
- 4227. Accreditation and licensure.
- 4228. Racial composition.

**9. ELECTIONS, VOTING, AND POLITICAL RIGHTS.**

- 4230. In general.
- 4231. Political parties and organizations.
- 4232. Voters, candidates, and elections.
- 4233. Redistricting and reapportionment.
- 4234. Initiative, recall, and referendum.
- 4235. Lobbying and lobbyists.
- 4236. Contributions and expenditures.
- 4237. Public funding.

**10. WAR AND NATIONAL SECURITY.**

- 4240. In general.
- 4241. Armed services.
- 4242. — In general.
- 4243. — Discharge or separation.
- 4244. — Pay and benefits.
- 4245. — Offenses and courts-martial.
  - (1). In general.
  - (2). Proceedings.
  - (3). Sentencing and punishment.
  - (4). Review.
- 4246. — Selective service and the draft.
- 4247. — Service academies; ROTC.
- 4248. National Guard.
- 4249. Military installations.
- 4250. Security clearances.
- 4251. Loyalty, espionage, and subversion.
- 4252. Terrorism.
- 4253. Prisoners of war; enemy combatants.

**11. CONTRACTS.**

- 4255. In general.
- 4256. Public contracts.

**12. TRADE OR BUSINESS.**

- 4260. In general.
- 4261. Prohibitions in general.
- 4262. Licenses, permits, and certifications in general.
- 4263. Days and hours of operation in general.
- 4264. Charges and prices in general.

**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.**(Cont'd)

- 4265. Antitrust regulation in general.
- 4266. Particular subjects and regulations.  
*Weapons and firearms, see §4496.*
- 4267. — In general.
- 4268. — Accountants.
- 4269. — Agriculture and crops.
- 4270. — Appraisers and auctioneers.
- 4271. — Architects and engineers.
- 4272. — Asylums and assisted living facilities.
- 4273. — Attorneys.
  - (1). In general.
  - (2). Admission and examination.
  - (3). Conduct and discipline.
- 4274. — Aviation and airspace.
- 4275. — Barbers, beauticians, and cosmetologists.
- 4276. — Chain stores.
- 4277. — Charitable solicitation.
- 4278. — Child care.
- 4279. — Contractors, plumbers, and electricians.
- 4280. — Detectives, private investigators, and security services.
- 4281. — Explosives; fireworks.
- 4282. — Financial institutions, transactions, and services.
- 4283. — Food and beverages; restaurants.
- 4284. — Funeral directors, cemeteries, and related occupations.
- 4285. — Gambling and gaming.
- 4286. — Health care professionals.
- 4287. — Hotels, motels, and other lodging.
- 4288. — Insurance.
- 4289. — Intoxicating liquors.
- 4290. — Mining and excavation; oil and gas.
- 4291. — News gathering and dissemination; newspapers.
- 4292. — Public amusement and entertainment.
- 4293. — Real estate agents and brokers.
- 4294. — Sales and marketing.
- 4295. — Securities and commodities transactions.
- 4296. — Social workers, counselors, and psychologists.
- 4297. — Veterinarians.

**XXVII. DUE PROCESS.**(Cont'd)

- 4299. Government competition with private business.
- 4300. Intellectual property.
- 4301. — In general.
- 4302. — Copyrights.
- 4303. — Patents.
- 4304. — Trademarks and trade names.

**13. ANIMALS AND PLANTS, REGULATION OF.**

- 4310. In general.
- 4311. Domestic animals and pets.
- 4312. Fence and stock laws.
- 4313. Game and hunting.
- 4314. Fish and fishing.

**14. ENVIRONMENT AND HEALTH.**

- 4320. In general.
- 4321. Woods and forests.
- 4322. Historical preservation.
- 4323. Water, wetlands, and water pollution.
- 4324. Air pollution.
- 4325. Noise pollution.
- 4326. Waste disposal and management.
- 4327. Hazardous waste or materials.
- 4328. Plants and wildlife; endangered species.
- 4329. Health care; hospitals and nursing homes.
- 4330. Drugs and medical devices.
- 4331. Public health.
- 4332. Smoking and tobacco regulation.

**15. MENTAL HEALTH.**

- 4335. In general.
- 4336. Duty to protect; failure to act.
- 4337. Commitment and proceedings therefor.
- 4338. Confinement and conditions thereof.
- 4339. Guardianship.
- 4340. Developmental disability; mental disability.
- 4341. Sexually dangerous persons; sex offenders.
- 4342. — In general.
- 4343. — Classification and registration; restrictions and obligations.
- 4344. — Commitment and confinement.
- 4345. Chemical dependency.
- 4346. Children and minors.

**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.(Cont'd)**

- 4347. — In general.
- 4348. — Sexually dangerous persons; sex offenders.

**16. MOTOR VEHICLES.**

- 4350. In general.
- 4351. Licensing and registration of vehicles.
- 4352. — In general.
- 4353. — Taxes and fees.
- 4354. Drivers' licenses.
- 4355. — In general.
- 4356. — Revocation, suspension, or reinstatement.
- 4357. Financial responsibility and insurance requirements.
- 4358. Alcohol and drug-related issues; testing.

**17. CARRIERS AND PUBLIC UTILITIES.**

- 4360. In general.
- 4361. Charges and prices in general.
- 4362. Aviation.
- 4363. Railroads.
- 4364. Motor carriers; trucking.
- 4365. Public transit systems.
- 4366. Buses and shuttle services.
- 4367. Taxicabs and limousines.
- 4368. Ferries.
- 4369. Towing and wrecking services.
- 4370. Telecommunications.
- 4371. Gas and electricity.
- 4372. Water, sewer, and irrigation.
- 4373. Garbage collection and hauling.
- 4374. Other particular carriers and utilities.

**18. FAMILIES AND CHILDREN.**

- 4380. In general.
- 4381. Proceedings in general.
- 4382. Familial association, integrity, and privacy in general.
- 4383. Marital relationship.
- 4384. — In general.
- 4385. — Same-sex marriage.
- 4386. — Termination; divorce, dissolution, and separation.
- 4387. — Spousal support; alimony.
- 4388. Cohabitation; domestic partnerships.
- 4389. Children and minors in general.

**XXVII. DUE PROCESS.(Cont'd)**

- 4390. Parent and child relationship.
- 4391. — In general.
- 4392. — Children born to unmarried parents; paternity.
- 4394. Guardianship.
- 4395. Adoption.
- 4396. Child custody, visitation, and support.
- 4397. Domestic abuse.
- 4398. — In general.
- 4399. — Reports and lists.
- 4400. Protection of children; child abuse, neglect, and dependency.
- 4401. — In general.
- 4403. — Reports and lists.
- 4403.5. Removal or termination of parental rights.
- 4404. Foster care.

**19. TORT OR FINANCIAL LIABILITIES.**

- 4410. In general.
- 4411. Debtor and creditor in general.
- 4412. Damages in general.
- 4413. Immunity in general.
- 4414. Support of persons and liability for public care in general.
- 4415. Liens, mortgages, and security interests.
- 4416. — In general.
- 4417. — Enforcement; proceedings.
- 4418. Torts and personal injuries.
- 4419. — In general.
- 4420. — Immunity in general.
- 4421. — Wrongful death and survival.
- 4422. — Professional malpractice.
- 4423. — Aviation.
- 4424. — Motor vehicles.
- 4425. Injuries to property.
- 4426. Penalties, fines, and sanctions in general.
- 4427. Punitive damages.
- 4428. Interest.
- 4429. Exemptions.

**20. ALIENS, IMMIGRATION, AND CITIZENSHIP.**

- 4435. In general.
- 4436. Proceedings in general.
- 4437. Status, rights, and disabilities in general.
- 4438. Admission and exclusion; deportation.



**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.(Cont'd)**

- 4439. Arrest, detention, supervision, and parole.
- 4440. Asylum, refugees, and withholding of removal.
- 4441. Citizenship and naturalization.

**21. PRIVATE ORGANIZATIONS.**

- 4445. In general.
- 4446. Corporations and limited liability companies.
- 4447. Religious organizations.

**22. PRIVACY AND SEXUAL MATTERS.**

- 4450. In general.
- 4451. Abortion, contraception, and birth control.
- 4452. — In general.
- 4453. — Minors.
- 4454. Refusal of medical treatment.
- 4455. Right to die; suicide and euthanasia.

**23. SEARCH, SEIZURE, AND CONFISCATION.**

- 4460. In general.
- 4461. Samples and tests; identification procedures.
- 4462. Electronic surveillance or eavesdropping.

**24. JUVENILE JUSTICE.**

- 4464. In general.
- 4465. Proceedings.
- 4466. Transfer to and from adult court.
- 4467. Sentencing and punishment.
- 4468. Probation.
- 4469. Correctional facilities and related institutions.

**25. OTHER PARTICULAR ISSUES AND APPLICATIONS.**

- 4475. In general.
- 4476. Alternative dispute resolution.
- 4477. Financial impairment and insolvency; receivers.
- 4478. Bankruptcy.
- 4479. Special, summary, or provisional remedies and proceedings.
- 4480. — In general.
- 4481. — Attachment.
- 4482. — Garnishment.

**XXVII. DUE PROCESS.(Cont'd)**

- 4483. — Replevin.
- 4484. — Sequestration.
- 4485. — Distrain.
- 4486. — Lis pendens; notice of pendency.
- 4487. — Preliminary injunction; temporary restraining order.
- 4488. Orders for protection.
- 4489. Habeas corpus.
- 4490. Extradition and detainers.
- 4491. Coroner's inquest; autopsies.
- 4492. Contempt.
- 4493. — In general.
- 4494. — Proceedings.
- 4495. — Punishment.
- 4496. Weapons and firearms.

**(H) CRIMINAL LAW.****1. IN GENERAL.**

- 4500. In general.

**2. NATURE AND ELEMENTS OF CRIME.**

- 4501. In general.
- 4502. Creation and definition of offense.
- 4503. — In general.
- 4504. — Statutory construction in general.
- 4505. — Certainty and definiteness in general.
- 4506. — Vagueness.
- 4507. — Overbreadth.
- 4508. — Retroactive laws and decisions; change in law.
- 4509. — Particular offenses.
  - (1). In general.
  - (2). Abortion and birth control.
  - (3). Arson and malicious mischief.
  - (4). Assault and battery.
  - (5). Burglary and trespass.
  - (6). Conspiracy, racketeering, and money laundering.
  - (7). Counterfeiting and forgery.
  - (8). Disorderly conduct and breach of the peace.
  - (9). Drugs; controlled substances.
  - (10). Escape.
  - (11). Extortion, threats, stalking, and harassment.
  - (12). False pretenses and fraud.
  - (13). Gambling and gaming.

**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.(Cont'd)**

- (14). Homicide, mayhem, and assault with intent to kill.
- (15). Infants, children, and minors, offenses specific to.
- (16). Kidnapping and false imprisonment.
- (17). Larceny, embezzlement, and receiving stolen property.
- (18). Liquor offenses.
- (19). Motor vehicle offenses.
- (20). Obscenity and lewdness.
- (21). Obstructing justice, bribery, perjury.
- (22). Robbery.
- (23). Sex offenses, incest, and prostitution.
- (24). Tax and internal revenue offenses.
- (25). Weapons and explosives.
- 4510. Different offenses in same transaction; merger.
- 4511. Defenses in general.
- 4512. Capacity to commit and responsibility for crime.
- 4513. — In general.
- 4514. — Insanity or mental illness.
- 4515. — Intoxication.
- 4516. Parties to offenses.

**3. LAW ENFORCEMENT.**

- 4520. In general.
- 4521. Conduct of police and prosecutors in general.
- 4522. — In general.
- 4523. — Investigative activity in general.
- 4524. — Entrapment.
- 4525. — Reliance on official assurance as to legality of conduct.
- 4526. — Immunity or cooperation agreements.
- 4527. — Charging decisions; prosecutorial discretion.
  - (1). In general.
  - (2). Misuse or abuse.
- 4528. — Neglect or delay.
- 4529. Preliminary complaint and warrant.
- 4530. — In general.
- 4531. — Bench warrants.
- 4532. — Arrest warrants.

**XXVII. DUE PROCESS.(Cont'd)**

- 4533. Stop and arrest.
- 4534. — In general.
- 4535. — Neglect or delay.
- 4536. — Grounds.
- 4537. — Conduct.
- 4538. — Search incident to stop or arrest.
- 4539. — Arrest records.
- 4540. Vehicle pursuits.
- 4541. — In general.
- 4542. — Rights of third parties; bystanders.
- 4543. Custody and confinement of suspects; pretrial detention.
- 4544. — In general.
- 4545. — Conditions.
  - (1). In general.
  - (2). Medical treatment.
  - (3). Safety and security.
  - (4). Other particular conditions.
- 4546. — Duration.
- 4547. Release.
- 4548. — In general.
- 4549. — Bail.
- 4550. — Bond, undertaking, or recognition.
- 4551. — Release pending appeal.
- 4552. Detention of witnesses.

**4. PROCEEDINGS AND TRIAL.**

- 4555. In general.
- 4556. Rights to notice, hearing, and defense, in general.
- 4557. Course and conduct of proceedings in general.
- 4558. Bias and prejudice in general.
- 4559. Jurisdiction and venue.
- 4560. Extraterritorial application of penal laws.
- 4561. Time for proceedings in general; limitations.
- 4562. Successive prosecutions; former jeopardy.
- 4563. — In general.
- 4564. — Mistrial, proceedings after.
- 4565. — Offenses against different sovereignties or governmental units.
- 4566. — Collateral estoppel.
- 4567. Pretrial proceedings in general.

**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.(Cont'd)**

- 4568. Preliminary examination, hearing, or commitment.
- 4569. — In general.
- 4570. — Timeliness.
- 4571. — Conduct of proceedings.
- 4572. Grand jury.
- 4573. — In general.
- 4574. — Composition.
- 4575. — Conduct of proceedings.
- 4576. — Evidence and witnesses.
- 4577. — Appearance and testimony of accused.
- 4578. Charging instruments; indictment and information.
- 4579. — In general.
- 4580. — Neglect or delay.
- 4581. — Form, requisites, and sufficiency.
- 4582. — Relation between allegations and proof; variance.
- 4583. — Amended, successive, and superseding instruments.
- 4584. Arraignment.
- 4585. Pleas.
- 4586. — In general.
- 4587. — Guilty pleas.
- 4588. — Other particular pleas.
- 4589. — Change of plea; withdrawal.
- 4590. — Plea agreements.
- 4591. Pretrial dismissal or discontinuance.
- 4592. Disclosure and discovery.
- 4593. — In general.
- 4594. — Evidence.
  - (1). In general.
  - (2). Particular items or information, disclosure of.
  - (3). — In general.
  - (4). — Witnesses.
  - (5). — Agreements.
  - (6). Duty to collect, find, or obtain.
  - (7). Duty to conduct or allow testing or other analysis.
  - (8). Duty to preserve.
  - (9). Requests for disclosure.
  - (10). Time and manner of disclosure.
  - (11). Proceedings concerning disclosure.
- 4595. — Grand jury testimony and proceedings.

**XXVII. DUE PROCESS.(Cont'd)**

- 4596. — Notice of defense.
- 4597. — Other issues and applications.
- 4598. Trial in general.
- 4599. — In general.
- 4600. — Right to fair trial in general.
- 4601. — Course and conduct of trial in general.
- 4602. Summary trial and conviction; bench trials.
- 4603. Public trial.
- 4604. — In general.
- 4605. — Publicity.
- 4606. Recordation; court reporters.
- 4607. Joinder and consolidation.
- 4608. Severance.
- 4609. Time of trial.
- 4610. — In general.
- 4611. — Adequacy of time to prepare; continuance.
- 4612. — Undue delay; speedy trial.
- 4613. Presence and appearance of defendant and counsel.
- 4614. — In general.
- 4615. — Clothing.
- 4616. — Custody and restraint.
- 4617. Judges.
- 4618. — In general.
- 4619. — Selection and assignment.
- 4620. — Qualifications.
- 4621. — Impartiality; bias and prejudice.
- 4622. — Removal; recusal.
- 4623. — Conduct and comments.
- 4624. Prosecutors.
- 4625. — In general.
- 4626. — Appointment, qualifications, and removal.
- 4627. Conduct and comments of counsel; argument.
- 4628. — In general.
- 4629. — Prosecutor.
- 4630. — Defense counsel.
- 4631. Use of perjured or falsified evidence.
- 4632. — In general.
- 4633. — Failure to correct false testimony.
- 4634. Questions of law or fact.
- 4635. Instructions.
- 4636. — In general.
- 4637. — Particular issues and applications.

**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.(Cont'd)**

- 4638. — Presumptions, inferences, and burden of proof.
- 4639. — Degree of proof; reasonable doubt.
- 4640. Verdict.
- 4641. — In general.
- 4642. — Directed verdict.
- 4643. — Verdict forms.
- 4644. — Special verdicts.
- 4645. — Inconsistent verdicts.
- 4646. New trial.
- 4647. Cumulative errors.

**5. EVIDENCE AND WITNESSES.**

- 4650. In general.
- 4651. Right to present evidence in general.
- 4652. Reception of evidence in general.
- 4653. Presumptions, inferences, and burden of proof.
- 4654. Admissibility in general.
- 4655. Improperly obtained evidence; suppression.
- 4656. Identification evidence and procedures.
- 4657. — In general.
- 4658. — Out-of-court or pretrial identification or confrontation.
  - (1). In general.
  - (2). Lineups.
  - (3). Show-ups.
  - (4). Photographs and drawings.
- 4659. — In-court identification.
  - (1). In general.
  - (2). Effect of improper pretrial identification.
- 4660. — Determination of admissibility; suppression.
- 4661. Statements, confessions, and admissions.
- 4662. — In general.
- 4663. — Voluntariness, compulsory testimony, and self-incrimination in general.
- 4664. — Circumstances under which made; interrogation.
  - (1). In general.
  - (2). Particular cases.
- 4665. — Recordation.
- 4666. — Silence.
- 4667. — Determination of admissibility; suppression.

**XXVII. DUE PROCESS.(Cont'd)**

- 4668. — Third party's statements, confessions, and admissions.
- 4669. Other acts and offenses.
- 4670. Hearsay.
- 4671. Other particular kinds or items of evidence.
- 4672. Witnesses in general.
- 4673. — In general.
- 4674. — Competency and qualifications.
- 4675. — Examination.
- 4676. — Sequestration.
- 4677. Right to present witnesses; compulsory process.
- 4678. Confrontation.
- 4679. Cross-examination.
- 4680. Credibility and impeachment.
- 4681. Opinion evidence.
- 4682. — In general.
- 4683. — Expert testimony.
- 4684. Defendant as witness.
- 4685. — In general.
- 4686. — Credibility and impeachment.
- 4687. — Silence.
- 4688. — Defendant's right to testify.
- 4689. Interference with witnesses.
- 4690. Vouching for witnesses; bolstering.
- 4691. Judicial questioning of witnesses.
- 4692. Immunity and privilege.
- 4693. Weight and sufficiency of evidence.
- 4694. Degree of proof; reasonable doubt.

**6. JUDGMENT AND SENTENCE.**

- 4700. In general.
- 4701. Treatment of defendants following conviction but before sentencing.
- 4702. Propriety of sentence in general.
- 4703. Discrimination or vindictiveness in general.
- 4704. Matters considered in sentencing.
- 4705. — In general.
- 4706. — Presentence report.
- 4707. — Credits.
- 4708. — Evidence and witnesses.
- 4709. Sentencing guidelines.
- 4710. Statutory minimum, maximum, or mandatory sentences.
- 4711. Multiple sentences; concurrent or consecutive terms.

**92. CONSTITUTIONAL LAW****XXVII. DUE PROCESS.**(Cont'd)

- 4712. Sentencing proceedings.
- 4713. — In general.
- 4714. — Right to hearing in general.
- 4715. — Course and conduct of proceedings in general.
- 4716. — Notice; disclosure and discovery.
- 4717. — Bifurcation.
- 4718. — Time for proceedings; continuance.
- 4719. — Presence and appearance of defendant and counsel.
- 4720. — Judges.
- 4721. — Prosecutors.
- 4722. — Conduct and comments of counsel; argument.
- 4723. — Instructions.
- 4724. Resentencing.
- 4725. — In general.
- 4726. — Reconsideration or modification.
- 4727. Presumptions, inferences, and burden of proof.
- 4728. Degree of proof; reasonable doubt.
- 4729. Habitual and career offenders.
- 4730. Probation and related dispositions.
- 4731. — In general.
- 4732. — Conditions.
- 4733. — Reconsideration, modification, or revocation.
  - (1). In general.
  - (2). Notice and hearing; proceedings.
- 4734. — Suspension of sentence.
- 4735. — Supervised release.
- 4736. Penalties and fines.
- 4737. Restitution.
- 4738. Alternative dispositions.
- 4739. Pretrial diversion and intervention.
- 4740. Execution of sentence.
- 4741. Capital punishment; death penalty.
- 4742. — In general.
- 4743. — Persons eligible.
- 4744. — Matters considered.
  - (1). In general.
  - (2). Evidence and witnesses.
- 4745. — Proceedings.
- 4746. — Execution of sentence.

**7. JURY.**

- 4750. In general.

- 4751. Necessity; right to jury trial.
- 4752. — In general.
- 4753. — Sentencing.
- 4754. Fair and impartial jury.
- 4755. Selection and qualifications; voir dire.
- 4756. — In general.
- 4757. — Recordation.
- 4758. — Presence of defendant or counsel.
- 4759. — Conduct and comments of prosecutor.
- 4760. — Death penalty cases.
- 4761. Conduct of or affecting jurors; deliberations.
- 4762. Unanimity.
- 4763. Sequestration.

**8. APPEAL OR OTHER PROCEEDINGS FOR REVIEW.**

- 4765. In general.
- 4766. Right to review.
- 4767. Timeliness.
- 4768. Record.
- 4769. Course and conduct of proceedings.
- 4770. Standard and scope of review.
- 4771. Determination and disposition.
- 4772. Death penalty cases.
- 4773. — In general.
- 4774. — Proportionality review.

**9. DISADVANTAGED PERSONS.**

- 4780. In general.
- 4781. Incompetency or mental illness.
- 4782. — In general.
- 4783. — Determination of competency or sanity.
  - (1). In general.
  - (2). Necessity; right to hearing.
  - (3). Course and conduct of proceedings.
  - (4). Presumptions, inferences, and burden of proof.
  - (5). Degree of proof; reasonable doubt.
- 4784. — Commitment pending competency determination.
- 4785. — Administration of drugs.
- 4786. — Capital punishment; death penalty.
- 4787. Indigency.
- 4788. — In general.
- 4789. — Expert assistance.

**93. CONTEMPT****XXVII. DUE PROCESS.**(Cont'd)

- (1). In general.
- (2). Psychological or psychiatric assistance.

- 4790. — Other kinds of assistance.
- 4791. — Transcript.
- 4792. — Recoupment of costs.
- 4793. Non-English speakers; interpreters.
- 4794. Hearing impairment.
- 4795. Other condition, disability, or illness.

**10. COUNSEL.**

- 4800. In general.
- 4801. Necessity; right to counsel in general.
- 4802. Notice and assertion of right in general.
- 4803. Stage of prosecution.
- 4804. — In general.
- 4805. — Investigation, apprehension, and interrogation.
- 4806. — Proceedings; trial.
- 4807. — Sentencing.
- 4808. — Appeal or other proceedings for review.
- 4809. Appointment of counsel.
- 4810. Choice of counsel.
- 4811. Waiver of counsel; self-representation.
- 4812. Adequacy and effectiveness of representation.
- 4813. — In general.
- 4814. — Appellate counsel.
- 4815. — Conflict of interest.
- 4816. Withdrawal; disqualification.

**11. IMPRISONMENT AND INCIDENTS THEREOF.**

- 4820. In general.
- 4821. Conditions of confinement in general.
- 4822. Property and employment.
- 4823. Medical care and treatment.
- 4824. Discipline and classification.
- 4825. Use of force; protection from violence.
- 4826. Segregation.
- 4827. Access to courts.
- 4828. Transfer.
- 4829. Reduction of term; good-time credits.
- 4830. Discharge and release.
- 4831. Costs of incarceration.

**12. OTHER PARTICULAR ISSUES AND APPLICATIONS.**

- 4835. In general.

- 4836. Post-conviction relief.
- 4837. Pardon and clemency.
- 4838. Parole.
- 4839. Criminal record.
- 4840. Victim rights.
- 4841. Costs.

**XXVIII. ENFORCEMENT OF FOURTEENTH AMENDMENT.****(A) IN GENERAL.**

- 4850. In general.
- 4851. Substantive rights or legislation.
- 4852. Deterring, preventing, or remedying violations.
- 4853. Congruence and proportionality.
- 4854. Discrimination or inequality in general.
- 4855. Racial discrimination.
- 4856. Gender discrimination.
- 4857. Equal Protection Clause, enforcement of.
- 4858. Due Process Clause, enforcement of.

**(B) PARTICULAR ISSUES AND APPLICATIONS.**

- 4860. In general.
- 4861. Governmental immunity in general.
- 4862. — In general.
- 4863. — Abrogation of immunity.
- 4864. Intellectual property.
- 4865. Civil rights legislation in general.
- 4866. Disabled persons.
- 4867. Religious freedoms.
- 4868. Labor and employment.
- 4869. — In general.
- 4870. — Age discrimination in general.
- 4871. — Wages and hours regulations.
- 4872. — Family and medical leave.
- 4873. Education.
- 4874. Criminal law and related remedies.

**93. CONTEMPT****SUBJECTS INCLUDED**

Disobedience to the process, orders or rules of courts, and other acts or conduct in

**93. CONTEMPT**

disregard of their authority or dignity, tending to impede or frustrate the administration of law

What constitutes such contempt, civil or criminal, in general

What persons are liable therefor

Power to punish contempt and proceedings therefor; and punishment of contempt

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Attorneys, summary jurisdiction of courts over, see ATTORNEYS AND LEGAL SERVICES

Contempt as discovery sanction, see FEDERAL CIVIL PROCEDURE or PRETRIAL PROCEDURE

Other bodies, contempt of authority—

Administrative tribunals, see ADMINISTRATIVE LAW AND PROCEDURE and topics dealing with particular administrative tribunals

Congress, see UNITED STATES

State legislatures, see STATES

Particular writs, orders or other mandates of courts, disobedience to, see CREDITORS' REMEDIES, DIVORCE, INJUNCTION, MANDAMUS, NUISANCE, WITNESSES, and other specific topics

Receivers, interference with possession of, see RECEIVERS, CORPORATIONS AND BUSINESS ORGANIZATIONS

Violation of a child custody or support order, see CHILD CUSTODY or CHILD SUPPORT

Violation of non-discovery protective order, see PROTECTION OF ENDANGERED PERSONS

**I. ACTS OR CONDUCT CONSTITUTING  
CONTEMPT OF COURT, ¶1–29.**

**II. POWER TO PUNISH, AND PROCEEDINGS THEREFOR, ¶30–69.**

**III. PUNISHMENT, ¶70–82.**

**I. ACTS OR CONDUCT CONSTITUTING  
CONTEMPT OF COURT.**

1. Nature and elements of contempt.
2. — In general.
3. — Criminal contempt.
4. — Civil contempt.
5. Constitutional and statutory provisions.

**I. ACTS OR CONDUCT CONSTITUTING  
CONTEMPT OF COURT.(Cont'd)**

6. Misconduct in presence of court.
7. Disturbance of proceedings of court.
8. Publications relating to court, jury, or officers.
9. Publications relating to pending proceedings.
10. Misconduct as officer of court.
11. Abuse of mandate or other proceeding.
12. Preventing attendance of party or witness.
13. Suppression or falsification of evidence.
14. Misconduct of or affecting jury.
15. Destruction or removal of subject of suit.
16. Fictitious bail or other security.
17. Resistance to or interference with execution of process or other mandate.
18. Interference with property in custody of the law.
19. Disobedience to mandate, order, or judgment.
20. — In general.
21. — Validity of mandate, order, or judgment.
22. — Stay or review of proceedings.
23. — Service on or knowledge of party or other person.
24. — Ability to obey.
25. — Demand and refusal of payment of money as adjudged.
26. — Demand and refusal of performance of act required.
27. Acts or defaults affecting only rights or remedies of parties to proceedings.
28. Defenses.
  - (1). In general.
  - (2). Acting under advice of counsel.
  - (3). Ignorance of law.
29. Persons liable.

**II. POWER TO PUNISH, AND PROCEEDINGS THEREFOR.**

30. Nature and grounds of power.
31. Constitutional and statutory provisions.
32. Scope and extent of authority.
33. — In general.
34. — Superior courts.
35. — Inferior courts.
36. — Judges and other officers.
37. Existence of other remedy.

**93. CONTEMPT****II. POWER TO PUNISH, AND PROCEEDINGS THEREFOR.(Cont'd)**

- 38. Former proceedings or adjudication.
- 39. Discretion of court.
- 40. Nature and form of remedy.
- 41. Persons entitled to prosecute.
- 41.1. — In general.
- 42. — Proceedings on court's own motion.
- 43. — Injury to prosecutor.
- 44. Jurisdiction.
- 45. Venue.
- 46. Limitations and laches.
- 47. Abatement of proceedings.
- 48. — In general.
- 49. — Termination of original action or proceeding.
- 50. Mode of entitling proceedings.
- 51. Summary proceedings.
- 51.1. — In general.
- 52. — Contempts in presence of court.
- 53. — Contempts not in presence of court.
- 54. Preliminary affidavit or information.
  - (.5). In general.
  - (1). Necessity.
  - (2). Formal requisites in general.
  - (3). Statements on information and belief.
  - (4). Sufficiency.
  - (5). Waiver thereof or of defects therein.
  - (6). Filing affidavit of charge.
  - (7). Amendment or withdrawal.
- 55. Notice or other process; attachment.
- 56. Arrest and bail.
- 57. Appearance and arraignment.
- 58. Plea, answer, or counter affidavit.
  - (1). In general.
  - (2). Right or necessity to put in answer or affidavit.
  - (3). Conclusiveness.
  - (4). Disclaimer of intention to commit contempt.
- 59. Interrogatories and answers thereto.
- 60. Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.

**II. POWER TO PUNISH, AND PROCEEDINGS THEREFOR.(Cont'd)**

- 61. Hearing and determination.
  - (1). In general; counsel.
  - (2). Questions for jury.
  - (3). Matters determined on hearing.
  - (4). Affording defendant opportunity to exculpate himself.
  - (5). Directing reference.
  - (6). Findings.
- 62. New trial.
- 63. Judgment or order.
  - (1). In general.
  - (2). Alternative judgment or order.
  - (3). Matters to be stated in general.
  - (4). Facts constituting contempt.
  - (5). Modifying, vacating, or making subsequent order.
- 64. Commitment.
- 65. Quashing or vacating proceedings.
- 66. Appeal or error.
  - Review of contempt of injunction, see INJUNCTION*  
~~§~~1799.
  - (.5). In general.
  - (1). Nature and form of remedy and jurisdiction.
  - (2). Decisions reviewable.
  - (3). Presentation and reservation of grounds of review.
  - (4). Right of review and parties.
  - (5). Transfer of cause and supersedeas.
  - (6). Record and assignment of errors.
  - (7). Review.
  - (8). Determination and disposition of cause.
  - (9). Liability on bonds.
- 67. Certiorari.
  - Review of contempt of injunction, see INJUNCTION*  
~~§~~1799.
- 68. Costs and fees.
- 69. Liabilities on bonds or undertakings.

**III. PUNISHMENT.**

- 70. Nature and grounds in general.
- 71. Constitutional and statutory provisions.
- 72. Punishment of contempt as criminal.
- 73. Indemnity to party injured.
- 74. — In general.
- 75. — Amount of fine.



**93. CONTEMPT****III. PUNISHMENT.**(Cont'd)

- 76. — Collection and disposition of fine.
- 77. Imprisonment on nonpayment of fine.
- 78. Imprisonment to compel payment of money.
- 79. Imprisonment to compel performance of act required.
- 80. Denial of privileges as litigant.
- 81. Purging contempt after adjudication.
- 82. Remission of fine, or discharge from imprisonment.

**95. CONTRACTS****SUBJECTS INCLUDED**

- Promises and agreements in general, express or implied, oral or written, and more particularly executory agreements
- Their nature, requisites, validity, incidents, construction, operation and effect
- Evidence relating thereto
- Modification or rescission thereof by new agreements or by acts of parties
- Discharge of the obligations thereof by operation of law or by performance or breach
- Actions for breach

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Acknowledgments of contracts in writing, see **ACKNOWLEDGMENT**
- Actions and remedies other than action for damages for breach—
  - Compelling performance, see **SPECIFIC PERFORMANCE**
  - Declaratory judgment as to construction and validity of contract, see **DECLARATORY JUDGMENT**
  - Injunction against breach, see **INJUNCTION**
- Particular forms of action, see **ACTION** and other specific topics
- Alteration of written contract, see **ALTERATION OF INSTRUMENTS**

- Arbitration provisions, see **ALTERNATIVE DISPUTE RESOLUTION**
- Compelling cancellation, surrender, etc. of contracts, see **CANCELLATION OF INSTRUMENTS**
- Damages for breach, including liquidated damages and penalties, see **DAMAGES** and specific topics relating to particular kinds of contracts
- Discharge of obligations, particular modes, see **PAYMENT, TENDER, ACCORD AND SATISFACTION, COMPROMISE, SETTLEMENT, AND RELEASE**, and other specific topics
- Evidence of written contracts and parol evidence to explain them, see **EVIDENCE**
- Frauds, statute of, requirements of, see **FRAUDS, STATUTE OF**
- Illegality, particular grounds, see **CHAMPERTY AND MAINTENANCE, GAMING, LOTTERIES, SUNDAY, USURY** and other specific topics
- Impairing obligation of contract, see **CONSTITUTIONAL LAW XXII**
- Implied, constructive, and quasi contracts, created by operation of law, and remedies thereon, see **ACCOUNT STATED, IMPLIED AND CONSTRUCTIVE CONTRACTS**, and other specific topics
- Indians or tribes, issues peculiar to contracts with, see **INDIANS** ¶142
- Lost instruments, establishing and enforcing, see **LOST INSTRUMENTS**
- Particular kinds of contracts, see **BAILMENT, SALES, COVENANTS** and other specific topics—
  - Particular occupations or transactions, contracts incident to, see **ALCOHOLIC BEVERAGES, INNKEEPERS, INSURANCE, CARRIERS**, and other specific topics
  - Property, contracts relating to or affecting particular kinds, see **CROPS, EASEMENTS, FENCES, PROPERTY VI, PATENTS, PUBLIC LANDS**, and other specific topics
  - Written instruments containing contracts, particular kinds, see **REAL PROPERTY CONVEYANCES, COMMERCIAL PAPER, LANDLORD AND TENANT, MORTGAGES AND DEEDS OF TRUST**, and other specific topics
- Particular personal relations, contracts between persons in, see **MARRIAGE AND**

**95. CONTRACTS**

COHABITATION, ATTORNEYS AND LEGAL SERVICES, PRINCIPAL AND AGENT, and other specific topics

Particular persons, contracts by, see INFANTS, MENTAL HEALTH and other specific topics—

Associations and unincorporated companies, see ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS XV

Corporations, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Governments, see UNITED STATES, STATES, TERRITORIES, INTERNATIONAL LAW IV

Partners, see PARTNERSHIP

Political or municipal bodies or officers, see MUNICIPAL CORPORATIONS, COUNTIES, EDUCATION, HIGHWAYS, and other specific topics

Reformation of contracts, see REFORMATION OF INSTRUMENTS

Statutes, obligations imposed by, see GAMING, USURY and other specific topics

**I. REQUISITES AND VALIDITY,**  
 ⚭1–142.

(A) NATURE AND ESSENTIALS IN GENERAL, ⚭1–10.

(B) PARTIES, PROPOSALS, AND ACCEPTANCE, ⚭11–29.

(C) FORMAL REQUISITES, ⚭30–46.

(D) CONSIDERATION, ⚭47–91.

(E) VALIDITY OF ASSENT, ⚭92–100.

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**II. CONSTRUCTION AND OPERATION,**  
 ⚭143–235.

(A) GENERAL RULES OF CONSTRUCTION, ⚭143–176.

(B) PARTIES, ⚭177–188.5.

(C) SUBJECT-MATTER, ⚭189–206.

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**I. REQUISITES AND VALIDITY.**

**(A) NATURE AND ESSENTIALS IN GENERAL.**

- 1.1. In general.
- 1.2. Definition.
- 1.3. Freedom of contract.
- 1.4. Elements in general.
- 1.5. Unilateral contracts.
- 1.6. Bilateral contracts.
- 1.7. Effect in general; enforcement in general.
- 1.8. Unreasonable or oppressive contracts.
- 1.9. — In general.
- 1.10. — Adhesion contracts; standardized contracts.
- 1.11. — Unconscionable contracts.
  - (1). In general.
  - (2). Procedural unconscionability.
  - (3). Substantive unconscionability.
  - (4). Defense of unconscionability.
- 1.12. — Burden of proof; presumptions.
- 1.13. — Severability.
- 1.14. — Questions for jury.
- 1.15. — Particular contracts.
2. What law governs.
3. Express contract.
6. Executed and executory contracts.
7. Nature of subject-matter.
8. Existence and condition of subject-matter.
9. Certainty as to subject-matter.
  - (1). In general.
  - (2). Services and compensation therefor.
  - (3). Place and time.
10. Mutuality of obligation.
 

*Sales of goods, see SALES ⚭712.*

  - (1). In general.
  - (2). Building, manufacturers, and services.
  - (3). Contracts of carriage.
  - (5). Sales and conveyances of land.
  - (6). Loans and advances.
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**(B) PARTIES, PROPOSALS, AND ACCEPTANCE.**

11. Capacity to contract in general.
12. Contract in particular capacity.
13. Number of parties.
14. Intent of parties.
15. Necessity of assent.

**95. CONTRACTS****I. REQUISITES AND VALIDITY.(Cont'd)**

- 16. Offer and acceptance in general.
- 16.5. Options; rights of first refusal.
- 17. Request or advertisement for proposals.
- 18. Making and communication of offer.
- 19. Revocation or withdrawal of offer.
- 20. Lapse of offer.
- 21. Rejection of offer.
- 22. Acceptance of offer and communication thereof.
  - (1). In general.
  - (2). Acceptance shown by signature.
  - (3). Necessity of communicating acceptance.
- 23. Qualified or conditional acceptance of offer.
- 24. Acceptance varying from offer.
- 25. Agreement to make contract in future; negotiations in general.  
*See also* §32.
- 26. Contracts by correspondence.
- 27. Implied agreements.
- 28. Evidence of agreement.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.
- 29. Questions for jury.

**(C) FORMAL REQUISITES.**

- 30. Form as element of contract.
- 31. Necessity of writing in general.
- 32. Agreements to be reduced to writing.
- 33. Form and contents of instrument.
- 34. Execution.
- 35. Signature.
- 36. Seal.
- 37. Attestation.
- 38. Affixing revenue stamps.
- 39. Incomplete instruments.
- 40. Several instruments.
- 41. Confirmation or ratification of defective instrument.
- 42. Delivery.
- 43. Acceptance.
- 44. Filing or recording.
- 45. Evidence.
- 46. Questions for jury.

**(D) CONSIDERATION.**

- 47. Necessity in general.
- 48. Contracts under seal.
- 49. Nature and elements.
- 50. — In general.
- 51. — Benefit to promisor.
- 52. — Detriment to promisee.
- 53. Adequacy.
- 54. Sufficiency in general.
  - (1). In general.
  - (2). Withholding competition.
  - (3). Surrender or payment of doubtful or disputed claim.
- 55. Mutual promises.
- 56. — In general.
- 57. — Mutuality.
- 58. — Contingent or conditional promises.
- 59. — Options and refusals.
- 60. Personal rights and relations.
- 61. Services.
- 62. Property and rights therein in general.
  - (1). In general.
  - (2). Rights in public lands.
  - (3). Property and rights therein of married women.
- 63. Money, investments, and securities.
- 64. Loans and advances.
- 65. Rights under contracts.
  - (1). In general.
  - (2). Consideration for subsidiary provision of contract.
  - (3). Release or transfer of interest in contract or claim.
  - (4). Repayment of amount received on contract.
- 65.5. Covenants not to compete.
- 66. Assumption of liability.
- 67. Pre-existing liability.
- 68. Compromise.
- 69. Arbitration or submission of controversy.
- 70. Forbearance.
- 71. — In general.
  - (1). In general.
  - (2). Extension of time of payment.
  - (3). Forbearance to sue or defend in general.
  - (4). Forbearance to contest will.
  - (5). Forbearance to foreclose mortgage.

**95. CONTRACTS****I. REQUISITES AND VALIDITY.(Cont'd)**

- (6). Dismissal or continuance of suit.
- (7). Forbearance to enforce judgment.
- (8). Refraining from bidding at sale.
- 72. — Existence or validity of right or remedy.
- 73. — Agreement to forbear.
- 74. Benefit to third person.
- 75. Performance of legal obligation.
  - (1). In general.
  - (2). Contractual obligations.
  - (3). Performance of official duty.
- 76. Moral obligation.
- 77. Natural affection.
- 78. Executed consideration.
- 79. Past consideration.
- 80. Impossible consideration.
- 81. Unenforceable consideration.
- 82. Statement of consideration.
- 83. Failure of consideration.
- 84. Effect of want or failure of consideration.
- 85. — In general.
- 86. — Partial want, or failure.
- 87. Evidence as to consideration or failure thereof.
- 87.1. — In general.
- 88. — Presumptions and burden of proof.
- 89. — Admissibility.
- 90. — Weight and sufficiency.
- 91. Questions for jury.

**(E) VALIDITY OF ASSENT.**

- 92. Physical or mental condition of party.
- 93. Mistake.
  - (1). In general.
  - (2). Signing in ignorance of contents in general.
  - (3). Signing by illiterate persons.
  - (4). Mistake of law.
  - (5). Mutual mistake.
- 94. Fraud and misrepresentation.
  - (1). In general.
  - (2). Materiality of representation.
  - (3). Intent to deceive.
  - (4). Representations as to contents of writing.
  - (5). Reliance on representation.
  - (6). Representations as to future events.

**I. REQUISITES AND VALIDITY.(Cont'd)**

- (7). Representations of opinion or law.
- (8). Suppression of truth.
- 95. Duress.
  - (1). In general.
  - (2). Duress of goods.
  - (3). Threats in general.
  - (4). Suits and threats to sue.
  - (5). Criminal prosecution or threats thereof.
- 96. Undue influence.
- 97. Estoppel and ratification.
  - (1). In general.
  - (2). What constitutes ratification.
- 98. Effect of invalidity.
- 99. Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.
- 100. Questions for jury.

**(F) LEGALITY OF OBJECT AND OF CONSIDERATION.**

- 101. What law governs.
  - (1). In general.
  - (2). Contracts immoral and against public policy.
- 102. Intent of parties.
- 103. Contravention of law in general.
- 104. Violation of statute.
- 105. — In general.
- 106. — Effect of prohibition without penalty.
- 107. — Effect of imposition of penalty.
- 108. Public policy in general.
  - (1). In general.
  - (2). Particular contracts.
- 109. Commission of civil injury.
- 110. Infringement of personal rights.
- 112. Immorality.
- 113. Inducing fraud or breach of trust.
  - (1). In general.
  - (2). Agreements in fraud of creditors.
  - (3). Breach of trust.
  - (4). Inducing breach of contract.
  - (5). Affecting administration of trust.
- 114. Exemption from liability.

**95. CONTRACTS****I. REQUISITES AND VALIDITY.(Cont'd)**

- 115. Restraint of trade or competition in trade.
- 116. — In general.
  - (1). In general.
  - (2). Restriction necessary for protection.
  - (3). Combinations and agreements to control prices and prevent competition in general.
  - (4). Contracts for purchase of entire output.
  - (5). Grant of exclusive privileges.
  - (6). Exclusive agencies.
  - (7). Use and sale of patented inventions.
- 117. — General or partial restraint.
  - (.5). In general.
  - (1). Nature of business to which contract relates.
  - (2). Limitations as to time and place in general.
  - (3). Extent of territory embraced in general.
  - (4). Entire state or larger territory.
  - (5). Particular cities or towns and small districts.
  - (6). Particular premises.
  - (7). Restrictions unlimited as to place.
  - (8). Restrictions unlimited or indefinite as to time.
  - (9). Restrictions unlimited as to place and time.
- 118. — Preventing disclosure of trade secrets.
- 119. Prevention of competition in bids or proposals.
- 120. Procuring or making fictitious bids or proposals.
- 121. Control of corporation.
- 122. Prohibited traffic or transactions.
- 123. Injury to public service in general.
  - (1). In general.
  - (2). Contracts with railroad companies.
- 124. Affecting election or appointment to office.
- 125. Affecting emoluments of office.
- 126. Influencing legislation.

**I. REQUISITES AND VALIDITY.(Cont'd)**

- 127. Ousting jurisdiction or limiting powers of court.
  - (1). In general.
  - (2). Agreement to refer or arbitrate disputes in general.
  - (4). Agreement as to place of bringing suit; forum selection clauses.  
*Agreements as to choice of law, see ¶129(1).*
- 128. Compounding offenses.
  - (1). In general.
  - (2). Guilt or innocence of accused.
  - (3). Offenses that may be compounded.
  - (4). Compensation for loss or civil liability.
- 129. Obstructing or perverting administration of justice.
  - (.5). In general.
  - (1). Agreements relating to actions and other proceedings in general.  
*Includes agreements as to choice of law. Forum selection clauses, see ¶127(4).*
  - (2). Contracts with witnesses.
  - (3). Procuring or suppressing evidence and prosecuting action.
  - (4). Agreement not to sue or to withdraw from suit.
  - (5). Agreement not to plead statute of limitations.
- 130. Prevention of competition at judicial sale.
- 131. Influencing action of administrative officer.
- 132. Prevention of competition for public work, franchises, or property.
- 133. Aid to public enemy.
- 134. Ratification.
- 135. Effect of illegality.
- 136. — In general.
- 137. — Partial illegality.
  - (1). In general.
  - (2). Contravention of law in general and violation of statutes.
  - (3). Against public policy in general.
  - (4). In restraint of trade.
- 138. — Relief of parties.
  - (.5). In general.
  - (1). Enforcement of contract in general.

**95. CONTRACTS****I. REQUISITES AND VALIDITY.(Cont'd)**

- (2). Executed contracts in general.
- (3). Recovery of money paid or property transferred.
- (4). Estoppel to urge illegality.
- (5). Account and division of proceeds.
- (6). Necessity of raising objection.
- (7). Illegality as defense to third person.
- 139. — Parties not in pari delicto.
- 140. — Further or subsequent agreement.
- 141. Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.
- 142. Questions for jury.

**II. CONSTRUCTION AND OPERATION.****(A) GENERAL RULES OF CONSTRUCTION.**

- 143. Application to contracts in general.
  - (1). In general.
  - (2). Existence of ambiguity.
  - (3). Rewriting, remaking, or revising contract.
  - (4). Subject, object, or purpose as affecting construction.
- 143.5. Construction as a whole.
- 144. What law governs.
- 145. Place of making contract.
- 146. Date or time of making contract.
- 147. Intention of parties.
  - (1). In general.
  - (2). Language of contract.
  - (3). Construing whole contract together.
- 148. Preliminary negotiations and agreements.
- 149. Oral contracts.
- 150. Written contracts in general.
- 151. Language of instrument.
- 152. — In general.
- 153. — Construction to give validity and effect to contract.
- 154. — Reasonableness of construction.
- 155. — Construction against party using words.

**II. CONSTRUCTION AND OPERATION.(Cont'd)**

- 156. — General and specific words and clauses.
- 157. — Mistakes in writing, grammar, or spelling.
- 158. — Punctuation.
- 159. — Particular words and phrases.
- 160. Recitals.
- 161. Separate clauses.
- 162. Conflicting clauses in general.
- 163. Writing and printing.
- 164. Construing instruments together.
- 165. Oral agreements collateral to written contracts.
- 166. Matters annexed or referred to as part of contract.
- 167. Existing law as part of contract.
- 168. Terms implied as part of contract.
- 169. Extrinsic circumstances.
- 170. Construction by parties.
  - (1). In general.
  - (2). Specific acts.
- 171. Entire or severable contracts.
  - (1). In general.
  - (2). Services.
  - (3). Building and other works.
- 172. Alternative stipulations and options.
- 173. Dependent or independent stipulations.
- 174. Exceptions and provisos.
- 175. Evidence to aid construction.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.
- 176. Questions for jury.
  - (1). In general.
  - (2). Ambiguity in general.
  - (3). Extrinsic facts.
  - (4). Technical terms.
  - (5). Particular words or terms.
  - (6). Contracts by correspondence.
  - (7). Oral contracts and contracts partly oral.
  - (8). Parties.
  - (9). Subject-matter.
  - (10). Time.
  - (11). Compensation.

**95. CONTRACTS****(B) PARTIES.**

- 177. Scope of contractual relation in general.
- 178. Designation.
- 179. Particular capacity.
- 180. Relation between parties of different parts.
- 181. Joint, several, or joint and several contracts.
- 181.1. — In general.
- 182. — Joint contracts and survivorship.
  - (1). In general.
  - (2). Survivorship.
- 183. — Several contracts.
- 184. — Joint and several contracts.
- 185. Rights acquired by third persons.
- 185.1. — In general.
- 186. — Privity of contract in general.
  - (1). In general.
  - (2). Building and road construction contracts.
  - (3). Successors in interest.
  - (4). Persons injured by nonperformance.
- 187. — Agreement for benefit of third person.
 

*Sales of goods, see SALES IX(F).*

  - (1). In general.
  - (2). Contract to pay money to a third person.
  - (3). Contract to pay another's debt in general.
  - (4). Contract by grantee to pay debt of grantor to third person.
  - (5). Acceptance by third person.
- 188. Duties and liabilities of third persons.
- 188.5. Warranties, rights and liabilities of third persons.
 

*Rights of third-party beneficiaries, see ¶187. Sales of goods, see SALES IX(F).*

  - (1). In general.
  - (2). Financiers; brokers.
  - (3). Successors in interest; subsequent buyers.

**(C) SUBJECT-MATTER.**

- 189. Scope and extent of obligation.
- 189.5. Exculpatory contracts.
- 190. Services in general.
- 191. Board, lodging, and support.
- 192. Property and rights therein in general.

**II. CONSTRUCTION AND OPERATION.(Cont'd)**

- 193. Money, investments, and securities.
- 194. Loans and advances.
- 195. Improvement of real property in general.
- 196. Architects, engineers, and surveyors.
- 197. Buildings and other works.
- 198. — In general.
  - (1). In general.
  - (2). Construction or repair of buildings.
  - (3). Construction of railroads.
  - (4). Construction of dam.
  - (5). Excavation contracts.
  - (6). Digging wells.
- 199. — Plans or drawings and specifications.
  - (1). In general.
  - (2). Extra work.
- 200. Agriculture.
- 201. Manufactures.
- 202. Trade and business.
  - (1). In general.
  - (2). Restriction of competition.
- 203. Printing and publishing.
- 204. Advertising.
- 205. Warranties.
 

*Sales of goods, see SALES IX. Leases or bailment of personalty, see BAILMENT ¶10. Automobile rental by agencies, see AUTOMOBILES ¶389.*

  - 205.5. — In general.
  - 205.10. — Express warranties.
  - 205.15. — Implied warranties.
    - (1). In general.
    - (2). Services.
    - (3). Fitness for purpose; merchantability.
    - (4). Workmanship and workmanlike performance.
    - (5). Plans and specifications.
  - 205.20. — Reliance.
  - 205.25. — Professional persons; architects and engineers.
 

*Attorneys and health care professionals, see ATTORNEYS AND LEGAL SERVICES ¶507 and HEALTH ¶625.*
  - 205.30. — Exclusion or limitation by contract, express warranty, or refusal to warrant.
  - 205.35. — Sale of dwellings; habitability.
 

*Condominiums and other common interest communities, see COMMON INTEREST COMMUNITIES ¶136.*

**95. CONTRACTS****II. CONSTRUCTION AND OPERATION.(Cont'd)**

- (1). In general.
- (2). New buildings; sales by builders and commercial activity.
- (4). Exclusion or limitation by contract, express warranty or refusal to warrant.
- 205.40. — Scope; performance or breach.
- 205.45. — Notice of breach.
- 206. Legal remedies and proceedings.

**(D) PLACE AND TIME.**

- 207. Stipulations as to place in general.
- 208. Place of performance.
- 209. Place of payment of compensation.
- 210. Stipulations as to time in general.
- 211. Time as of the essence of the contract.
- 212. Reasonable time.
  - (1). In general.
  - (2). Time for performance where no time is specified.
- 213. Time of performance.
  - (1). In general.
  - (2). Construction contracts.
- 214. Time of payment of compensation.
- 215. Duration of contract in general.
  - (1). In general.
  - (2). What constitutes termination.
- 216. Continuing contracts.
- 217. Option to renew or terminate contract.

**(E) CONDITIONS.**

- 218. Nature and scope in general.
- 219. Express conditions.
- 220. Implied conditions.
- 221. Conditions precedent in general.
  - (1). In general.
  - (2). What are conditions precedent in general.
  - (3). Conditions precedent to payment of money or price.
- 222. Suspensory conditions.
- 225. Concurrent conditions.
- 226. Conditions subsequent.
- 227. Waiver.

**(F) COMPENSATION.**

- 228. Right to compensation in general.
- 229. Rate or amount in general.

**II. CONSTRUCTION AND OPERATION.(Cont'd)**

- (1). In general.
- (2). Percentage contracts.
- (3). Compensation of architects.
- (4). Contracts for board.
- 230. Reasonable compensation.
- 231. Contracts for buildings and other works.
  - (1). In general.
  - (2). Excavation and drainage contracts.
- 232. Alterations and extra work.
  - (.5). In general.
  - (1). What constitutes extra work or materials in general.
  - (2). Buildings.
  - (3). Authority to do extra work or furnish materials.
  - (4). Necessity that authority be in writing, and waiver of requirement.
  - (5). Necessity for notice of claim and delay in making claim.
  - (6). Compensation for extra work done by others.
  - (7). Amount or rate.
- 233. Reimbursement of expenditures.
- 234. Deductions and offsets.
- 235. Mode of making compensation.

**III. MODIFICATION AND MERGER.**

- 236. Contracts subject to modification.
- 237. Consideration for modification.
  - (.5). In general.
  - (1). Necessity.
  - (2). Sufficiency.
- 238. Written contracts.
  - (1). In general.
  - (2). Parol modification.
  - (3). Ratification of parol modification.
- 239. Contracts under seal.
- 240. Modification as to parties.
- 241. Alteration or addition of terms.
- 242. Extension of time.
- 243. Modification as to conditions.
- 244. Change of compensation.
- 245. Merger in subsequent contract.
  - (1). In general.
  - (2). Subsequent contract of higher nature.



**95. CONTRACTS****III. MODIFICATION AND MERGER.(Cont'd)**

- (3). Effect of subsequent invalid contract.
- 246. Operation and effect.
- 247. Evidence.
- 248. Questions for jury.

**IV. RESCISSION AND ABANDONMENT.**

- 249. Contracts subject to rescission.
- 250. Option to rescind.
- 251. Agreement to rescind.
- 252. — In general.
- 253. — Assent of parties.
- 254. — Formal requisites.
- 255. — Consideration.
- 256. Abandonment of rights.
- 257. Grounds for rescission by party.
- 258. — In general.
- 259. — Invalidity of contract.
- 260. — Failure of consideration.
- 261. — Failure of performance or breach.
  - (1). In general.
  - (2). What breach will authorize rescission in general.
  - (3). Failure to pay.
  - (4). Partial breach.
  - (5). Rendering performance impossible.
  - (6). Repudiation or rescission by other party.
  - (7). Delay.
- 262. Estoppel or waiver.
- 263. Conditions precedent to rescission.
- 264. — In general.
- 265. — Restoration of former status of parties.
- 266. — Restoration of consideration or benefit.
  - (1). In general.
  - (2). Contracts secured by fraud.
- 267. Defenses or objections to rescission.
- 268. Persons entitled to rescission.
- 269. Persons as against whom contract may be rescinded.
- 270. Time for rescission and laches.
  - (1). In general.
  - (2). Rescission for invalidity of assent.
  - (3). Questions for jury.
- 271. Election to rescind and notice.

**IV. RESCISSION AND ABANDONMENT.(Cont'd)**

- 272. Acts constituting rescission.
- 273. Partial rescission.
- 274. Operation and effect.

**V. PERFORMANCE OR BREACH.**

- 275. Obligation to perform in general.
- 276. What law governs.
- 277. Demand of performance.
  - (.5). In general.
  - (1). Necessity.
  - (2). Sufficiency.
- 278. Performance of conditions.
  - (.5). In general.
  - (1). Necessity of performance.
  - (2). Sufficiency of performance.
- 279. Tender of performance.
  - (.5). In general.
  - (1). Necessity.
  - (2). Sufficiency of tender.
- 280. Sufficiency of performance in general.
  - (1). In general.
  - (2). Performance by party through third person.
  - (3). Building contracts in general.
  - (4). Performance by architect.
  - (5). Well and sewer contracts.
- 281. Tests of performance in general.
- 282. Satisfaction of party.
- 283. Approval or decision of architects, engineers, or others.  
*Arbitrators' decisions, see ALTERNATIVE DISPUTE RESOLUTION.*
- 284. — In general.
  - (1). In general.
  - (1.5). Power of architect to modify or alter terms of contract.
  - (2). Condition precedent to recovery in general.
  - (3). Condition precedent to recovery on building contracts.
  - (4). Conclusiveness and effect of decision in general.
- 285. — Determination of disputes.
  - (1). In general.
  - (2). What disputes are to be submitted.

**95. CONTRACTS****V. PERFORMANCE OR BREACH.(Cont'd)**

- (3). Persons to whom disputes should be referred and their qualifications.
- 286. — Acceptance or approval of work.
- 287. — Certificates in general.
  - (1). In general.
  - (2). Conclusiveness and effect of architect's certificate.
- 288. — Certificates as to progress.
- 289. — Withholding approval or certificate.
- 290. — Estoppel or waiver.
- 291. — Mistake.
- 292. — Fraud.
- 293. Substantial performance.
- 294. — In general.
- 295. — Buildings and other works.
  - (1). In general.
  - (2). Railroad construction contracts.
  - (3). Lighting, heating and plumbing contracts.
- 296. Deviations and alterations.
- 297. Partial performance.
- 298. Delay in performance.
- 299. — In general.
  - (1). In general.
  - (2). Right of contractor to recover on account of delay.
- 300. — Excuses.
  - (1). In general.
  - (2). Delay caused by extra work.
  - (3). Delay caused by fault of other party.
  - (4). Delay caused by other contractors or workers in general.
  - (5). Delay caused by strike.
- 301. — Effect.
- 302. Defects in performance.
- 303. Excuses for nonperformance or defects.
  - (1). In general.
  - (2). Operation of law.
  - (3). Act of God.
  - (4). Performance prevented by other party or third person.
  - (5). Contracts for buildings and other works.
- 304. Acceptance of performance in general.
  - (.5). In general.

**V. PERFORMANCE OR BREACH.(Cont'd)**

- (1). Necessity of acceptance.
- (2). What constitutes acceptance.
- 305. Waiver of defects and objections.
  - (1). In general.
  - (2). Use of building or taking possession.
  - (3). Payment or acceptance of payment.
- 306. Completion by other party.
  - (.5). In general.
  - (1). Right or duty to complete on default of other party.
  - (2). Right of party failing to perform or his creditors.
  - (3). Right of party completing contract.
  - (4). Certificate as to failure to perform and notice to contractor.
- 307. Property in materials.
- 308. Payment of compensation.
- 309. Discharge by impossibility of performance.
  - (1). In general.
  - (2). Destruction of subject-matter.
- 310. Discharge by insolvency or bankruptcy of party.
- 311. Discharge by death of party.
- 312. Acts or omissions constituting breach in general.
  - (1). In general.
  - (2). Making similar contracts with others.
  - (3). Failure to make payments.
  - (4). Contract not to engage in or injure business carried on by another.
  - (5). Warranties.
- 313. Renunciation.
  - (1). In general.
  - (2). Acts constituting renunciation and liabilities therefor.
- 314. Breach by making performance impossible.
- 315. Breach by failure of performance.
- 316. Waiver of breach.
  - (1). In general.
  - (2). Failure to take possession and complete contract.

**95. CONTRACTS****V. PERFORMANCE OR BREACH.(Cont'd)**

- (3). Waiver of one breach by alleging another.
- (4). Failure to object during performance.
- (5). Demand of performance.
- (6). Effect of waiver.
- 317. Effect of breach in general.
- 318. Discharge of contract by breach.
- 319. Rights and liabilities on partial performance.
  - (.5). In general.
  - (1). Right to recover for partial performance in general.
  - (2). Excuse for failure to fully perform.
- 320. Rights and liabilities on defective performance.
- 321. Rights and liabilities on breach.
  - (1). In general.
  - (2). Where no damages result from breach.
  - (3). Right to procure material elsewhere.
  - (4). Recovery of payments or discounts.
  - (5). Contracts to loan money and execute note.
- 322. Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency in general.
  - (4). Sufficiency of evidence as to building contracts.
  - (5). Sufficiency of evidence as to compensation.
- 323. Questions for jury.
  - (1). In general.
  - (2). Uncontroverted evidence.
  - (3). Building contracts.

**VI. ACTIONS FOR BREACH.**

- 324. Nature and form of remedy.
  - (1). In general.
  - (2). Action on contract or for breach.
- 325. What law governs.
- 326. Grounds of action.
- 327. Conditions precedent.

**VI. ACTIONS FOR BREACH.(Cont'd)**

- (1). In general.
- (2). To enforcing agreement to pay debt owing to third person.
- (3). Statement of amount due for labor and materials.
- (4). Release of claims.
- 328. Defenses.
  - (1). In general.
  - (2). No damages resulting from breach.
  - (3). Waiver of defense.
  - (4). Defenses in actions on contracts for benefit of third persons.
  - (5). Right to change ground of defense.
- 329. Time to sue and limitations.
- 330. Parties.
  - (1). In general.
  - (2). Plaintiffs in general.
  - (3). Name in which action must be brought.
  - (4). Defendants.
- 331. Pleading.
- 331.1. — In general.
- 332. — Declaration, complaint, or petition in general.
  - (1). In general.
  - (2). Sufficiency of statement of cause of action in general.
  - (3). Fulfillment of conditions precedent.
  - (4). Allegation as to certificate or decision of architect or others.
- 333. — Allegation or statement of contract or promise.
  - (1). In general.
  - (2). Allegation as to whether contract is in writing.
  - (3). Execution.
  - (4). Intention of parties.
  - (5). Pleading contract or specifications.
  - (6). Modification of contract.
  - (7). Parties to contract.
  - (8). Validity of contract.
  - (9). Acceptance of contract.
- 334. — Consideration.
- 335. — Performance by plaintiff.
  - (.5). In general.

**95. CONTRACTS****VI. ACTIONS FOR BREACH.(Cont'd)**

- (1). Necessity of alleging performance.
- (2). Sufficiency of allegations.
- 336. — Notice and demand.
- 337. — Breach.
  - (1). In general.
  - (2). Sufficiency of allegations to show breach.
  - (3). Allegation of damage.
  - (4). Manner of pleading several breaches.
  - (5). Allegation as to time for performance by defendant.
- 338. — Plea, answer, or affidavit of defense in general.
  - (1). In general.
  - (2). Rescission or modification.
  - (3). Necessity for affidavit of defense.
  - (4). Sufficiency of affidavit of defense.
- 339. — Denials and admissions.
- 340. — Want of consideration.
- 341. — Failure of consideration.
- 342. — Invalidity of assent and illegality.
- 343. — Nonperformance by plaintiff.
- 344. — Performance by defendant.
- 345. — Replication or reply and subsequent pleadings.
- 346. — Issues, proof, and variance.
  - (1). In general.
  - (2). Matters to be proved.
  - (3). Evidence admissible under pleadings in general.
  - (4). Admissibility of contract sued on and other contracts or evidence thereof.
  - (4.5). Admissibility of proof of quantum meruit.
  - (5). Admissibility of proof of waiver or modification.
  - (6). Admissibility of proof of intention of parties.
  - (7). Admissibility of proof of fraud or illegality.
  - (8). Admissibility of proof as to performance or breach in general.
  - (9). Evidence admissible under general denial.
  - (10). Variance as to date and terms of contract in general.

**VI. ACTIONS FOR BREACH.(Cont'd)**

- (11). Variance as to performance or breach.
- (12). Declaring on express contract and recovering on quantum meruit.
- (13). Declaring on unconditional contract and quantum meruit and recovering on conditional contract.
- (14). Variance as to demand.
- (15). Variance as to parties.
- (16). Variance as to form of contract.
- 347. Evidence.
  - 347.1. — In general.
- 348. — Presumptions and burden of proof.
- 349. — Admissibility.
  - (1). In general.
  - (2). Evidence as to terms of contract.
  - (3). Admissibility of contract sued on or other contracts.
  - (4). Books, papers, and reports, and evidence relating thereto.
  - (5). Letters and telegrams, or evidence as to contents thereof.
  - (6). Evidence of ability, willingness, or attempt to perform contract.
  - (7). Evidence of value or price.
- 350. — Weight and sufficiency.
  - (1). In general.
  - (2). Evidence of terms of contract.
  - (3). Evidence of rescission.
- 351. Trial.
  - 351.1. — In general.
- 352. — Questions for jury.
  - (1). In general.
  - (2). Sufficiency of evidence to justify submission to jury in general.
  - (3). Nature and terms of contract.
  - (4). Reasonableness of contract or condition.
  - (5). Amount of recovery.
  - (6). Rescission or termination.
- 353. — Instructions.
  - (1). In general.
  - (2). As to making or existence of contract.
  - (3). As to parties.
  - (4). As to consideration.
  - (5). As to validity or legality.

**95. CONTRACTS****VI. ACTIONS FOR BREACH.(Cont'd)**

- (6). As to construction.
- (7). As to modification or rescission and abandonment.
- (8). As to performance or breach in general.
- (9). As to benefit derived from performance.
- (10). As to amount of recovery or other relief.
- (11). As to extra work.
- 354. — Verdict and findings.
- 355. Judgment.

**96. CONTRIBUTION****SUBJECTS INCLUDED**

Implied obligation to reimburse one who has discharged an obligation or suffered a loss for which another or others are liable with him, to the extent of the proportionate share of such other or others

Rights, liabilities and remedies of the parties in general

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Contractual obligation to reimburse another, in full or in part, see **INDEMNITY**

Environmental response and cleanup statutes, contribution under, see **ENVIRONMENTAL LAW**

Implied contract, or obligation imposed by law, to reimburse another in full, see **INDEMNITY**

Mary Carter and high-low agreements, effect of, see **COMPROMISE, SETTLEMENT, AND RELEASE**

Negligence of joint tortfeasors creating liability for contribution, particular acts constituting, see **AUTOMOBILES, CARRIERS** and other specific topics

Particular persons, occupations and transactions involving special rules as to contribution, see **COMMERCIAL PAPER, INSURANCE, WORKERS' COMPENSATION**, and other specific topics—

Associations and unincorporated companies, members of, see **ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS XV**

Corporations, members of, see **CORPORATIONS AND BUSINESS ORGANIZATIONS** and other specific topics

Co-sureties, see **PRINCIPAL AND SURETY**

Co-tenants, see **PROPERTY IV**

Joint contractors, see **JOINT VENTURES**

Partners, see **PARTNERSHIP**

Party walls, owners of, see **PARTY WALLS**

Secondary liability, persons under, see **GUARANTY, PRINCIPAL AND SURETY**

1. Nature and grounds of obligation.
2. Common interest or liability.
3. — In general.
4. — Joint debtors.
5. — Joint wrongdoers.
  - (1). In general.
  - (2). Effect of statute.
  - (3). Absence of intent or moral turpitude; negligence.
  - (4). Persons not in pari delicto; active and passive wrongdoers.
  - (5). Common liability.
  - (6). Particular torts or wrongdoers.
  - (6.1). — In general.
  - (7). — Automobile cases.
6. Payment or discharge of common liability.
7. Measure of contribution.
8. Defenses.
9. Actions.
  - (.5). In general.
  - (1). Nature of action.
  - (2). Notice.
  - (3). Time for bringing action.
  - (4). Parties.
  - (5). Pleading.
  - (6). Evidence.
  - (7). Trial.
  - (8). Judgment.

**96H. CONTROLLED SUBSTANCES****96H. CONTROLLED SUBSTANCES****SUBJECTS INCLUDED**

Regulation of the manufacture, possession, distribution, importation, etc., of narcotics, other drugs and substances subject to abuse and addiction, counterfeits of such drugs and drug paraphernalia

Criminal liability and prosecution for violations of such regulations

Searches, seizures, and forfeitures relating to controlled substances

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Approval for manufacture and sale, and regulation generally of drugs and medical devices, see **HEALTH**

Arrests for controlled substance offenses, see **ARREST**

Commitment and treatment of addicts, see **CHEMICAL DEPENDENTS**

Conspiracies to commit controlled substance offenses, see **CONSPIRACY**

Insecticides, fungicides, herbicides, and rodenticides, see **AGRICULTURE** and **ENVIRONMENTAL LAW**

Offenses and prosecutions under tax laws, see **INTERNAL REVENUE** and **TAXATION**

Regulation and liabilities of health professionals, including pharmacists and drug testing labs, see **HEALTH**

Searches and seizures arising out of traffic stops, see **AUTOMOBILES**

I. IN GENERAL, ⚭1–19.

II. OFFENSES, ⚭20–59.

III. PROSECUTIONS, ⚭60–100.

IV. SEARCHES AND SEIZURES, ⚭101–159.

(A) IN GENERAL, ⚭101–102.

(B) SEARCH WITHOUT WARRANT, ⚭103–139.

(C) SEARCH UNDER WARRANT, ⚭140–159.

V. FORFEITURES, ⚭160–190.

**I. IN GENERAL.**

1. Nature and power to regulate.
2. — In general.
3. — Preemption.
4. Statutes and other regulations.

**I. IN GENERAL.(Cont'd)**

5. — In general.
6. — Validity.
7. — Construction and operation in general.
8. — Retroactivity.
9. Substances regulated; definitions and schedules.
10. Prescriptions and records.
11. Registration of offenders.
12. Penalties for violations.
13. Civil liability.

**II. OFFENSES.**

20. In general.
21. Miscellaneous offenses.
22. Manufacture.
23. Transportation.
24. Possession.
25. — In general.
26. — Elements in general.
27. — Knowledge and intent.
28. — Constructive possession.
29. — Substance and quantity possessed.
30. — Joint or exclusive possession.
31. Possession for sale or distribution.
32. Sale, distribution, delivery, transfer or trafficking.
33. — In general.
34. — Elements in general.
35. — Knowledge and intent.
36. Purchase or solicitation.
37. Forgery, fraud or falsehood, obtaining by.
38. Use, being under the influence or addiction.
39. Importation.
40. Continuing criminal enterprise; drug organizations.
41. Registration offenses.
42. Paraphernalia and instrumentalities.
43. Counterfeit or imitation substances.
44. Persons liable.
45. — In general.
46. — Aiders and abettors.
47. — Agents; agency defense.
48. Defenses.
49. — In general.
50. — Impossibility.
51. — Medical necessity or assistance.

**96H. CONTROLLED SUBSTANCES****III. PROSECUTIONS.**

60. In general.
61. Indictment, information or complaint.
62. — In general.
63. — Possessory offenses.
64. — Sale, distribution, delivery, transfer or trafficking.
65. — Substance and quantity involved.
67. — Issues, proof and variance.
68. Presumptions and burden of proof.
69. Admissibility of evidence.
70. Weight and sufficiency of evidence.
71. — In general.
72. — Credibility and corroboration.
73. — Circumstantial evidence in general.
74. — Substance and quantity in general.
75. — Knowledge and intent in general.
76. — Miscellaneous offenses.
77. — Manufacture.
78. — Transportation.
79. — Possession in general.
80. — Possessory offenses.
81. — Possession for sale or distribution.
82. — Sale, distribution, delivery, transfer or trafficking.
83. — Purchase or solicitation.
84. — Forgery, fraud or falsehood, obtaining by.
85. — Use, being under the influence or addiction.
86. — Importation.
87. — Continuing criminal enterprise; drug organizations.
88. — Registration offenses.
89. — Paraphernalia and instrumentalities.
90. — Counterfeit or imitation substances.
91. Questions for jury.
92. — In general.
93. — Possessory offenses.
94. — Sale, distribution, delivery, transfer or trafficking.
95. Instructions.
96. — In general.
97. — Possessory offenses.
98. — Sale, distribution, delivery, transfer or trafficking.
99. Verdict.
100. Sentence and punishment.
  - (1). In general.

**III. PROSECUTIONS.(Cont'd)**

- (2). Extent of punishment.
- (3). Exceptions to statutory minimums; “safety valve”.
- (4). — In general.
- (5). — Criminal history.
- (6). — Weapons or violence.
- (7). — Death or serious injury.
- (8). — Organizers, leaders, managerial role.
- (9). — Cooperation and disclosure.
- (10). — Proceedings.

**IV. SEARCHES AND SEIZURES.****(A) IN GENERAL.**

101. In general.
102. Statutory provisions.

**(B) SEARCH WITHOUT WARRANT.**

103. In general.
104. Probable or reasonable cause.
105. Exigent circumstances.
106. Plain view in general.
107. Carriers.
108. — In general.
109. — Electronic devices in packages.
110. Motor vehicle searches.
111. — In general.
112. — Probable or reasonable cause.
113. — Informants.
114. — Exigent circumstances.
115. — Plain view.
116. — Scope of search; compartments and containers.
117. — Place and time of search; impoundment and inventory.
118. Airplanes and airports.
119. Ships, boats and vessels.
120. Persons and personal effects, search of.
121. — In general.
122. — Probable or reasonable cause.
123. — Exigent circumstances.
124. — Informants.
125. — Purses, bags, or suitcases.
126. — Strip search; body cavity search.
127. Premises, search of.
128. — In general.
129. — Probable or reasonable cause.
130. — Exigent circumstances.

**97C. CONVERSION AND CIVIL THEFT****IV. SEARCHES AND SEIZURES.(Cont'd)**

- 131. — Plain view.
- 132. — Informants.
- 133. — Scope of search.
- 134. — Open fields; curtilage or yard; growing plants.
- 135. — Hotels and motels.
- 136. — Business premises.
- 137. Odor detection; use of dogs.
- 138. Objects thrown or abandoned.

**(C) SEARCH UNDER WARRANT.**

- 140. In general.
- 141. Issuance, requisites, and validity of warrant in general.
- 142. — In general.
- 143. — Descriptions, overbreadth.
- 144. Affidavits, complaints, and evidence for issuance of warrants.
- 145. — In general.
- 146. — Probable cause in general.
- 147. — Error or ambiguity; omissions.
- 148. — Informants.
  - (1). In general.
  - (2). Personal knowledge.
  - (3). Reliability; corroboration.
  - (4). Confidential or unnamed informants.
- 149. — Lapse of time; staleness.
- 150. Execution and return of warrants in general.
- 151. — In general.
- 152. — Time for search; day or night.
- 153. — Knock and announce requirement; forcible or emergency entrance.
- 154. — Objects seized; plain view.
- 155. — Luggage and packages; odor and use of dogs.
- 156. Disposition of property.

**V. FORFEITURES.**

- 160. In general.
- 161. Statutory provisions.
- 162. Nature, purpose, and scope.
- 163. Construction and operation of regulations in general.
- 164. Property subject to forfeiture.
- 165. — In general.
- 166. — Excessiveness and proportionality.

**V. FORFEITURES.(Cont'd)**

- 167. — Legal fees and funds therefor.
- 168. Grounds.
- 169. — In general.
- 170. — Probable or reasonable cause; substantial connection.
- 171. — Particular cases.
- 172. Defenses.
- 173. — In general.
- 174. — Lack of knowledge or consent.
- 175. Rights of third persons.
- 176. Proceedings.
- 177. — In general.
- 178. — Disposition of property pending forfeiture.
- 179. — Jurisdiction.
- 180. — Standing; parties.
- 181. — Notice and process.
- 182. — Time for proceedings.
- 183. — Pleading.
- 184. — Evidence.
- 185. — Trial or hearing and determination.
- 186. — Review.
- 187. — Costs.
- 188. Operation and effect.
- 189. Post-forfeiture remission or mitigation.
- 190. Postjudgment disposition of property.

**97C. CONVERSION AND CIVIL THEFT****SUBJECTS INCLUDED**

The wrongful taking, possession or disposition of another's property, and the remedy provided therefor by law

An act or series of acts of willful interference, without authority, with personal property in a manner inconsistent with the rights of the owner or other person entitled to immediate possession, by wrongfully taking, detaining, or disposing of the property

Right of action and defenses, and the nature and extent of liability, for such acts



**97C. CONVERSION AND CIVIL THEFT**

Proceedings in actions for trover, conversion, and civil theft, including the measure and amount of damages

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Changes in the nature of property as real or personal by means of physically attaching it to or severing it from other property, see **PROPERTY** ¶5

Changes in the nature of property as real or personal for equitable purposes in the consideration of the law, see **EQUITABLE CONVERSION**

Crime victim's relief acts, providing recovery of loss following criminal conversion, see **CRIMINAL LAW**

Criminal conversion, offense of, see **EMBEZZLEMENT, LARCENY**

Particular relationships and types of property, conversion involving, see **ANIMALS, ATTORNEYS AND LEGAL SERVICES, BAILMENT, BROKERS, CARRIERS, LANDLORD AND TENANT, LOGS AND LOGGING, MORTGAGES AND DEEDS OF TRUST, PRINCIPAL AND AGENT, SECURED TRANSACTIONS, SHIPPING, PROPERTY IV, TRUSTS**, and other specific topics

Possession of goods, remedies for recovery, see **DETINUE, REPLEVIN**

**I. ACTS CONSTITUTING AND LIABILITY THEREFOR, ¶100–119.**

**II. ACTIONS, ¶120–251.**

(A) **RIGHT OF ACTION AND DEFENSES, ¶120–149.**

(B) **PROCEEDINGS IN GENERAL, ¶150–179.**

(C) **EVIDENCE, ¶180–199.**

(D) **DAMAGES, ¶200–229.**

(E) **TRIAL, ¶230–239.**

(F) **JUDGMENT, ¶240–249.**

(G) **COSTS, ¶250–251.**

**I. ACTS CONSTITUTING AND  
LIABILITY THEREFOR.**

100. In general; nature and elements.

101. What law governs.

102. Preemption.

103. Property subject of conversion or theft.

104. — In general.

**I. ACTS CONSTITUTING AND LIABILITY  
THEREFOR.(Cont'd)**

105. — Intangible and intellectual property in general.

106. — Money and commercial paper; debt.

107. Intent.

108. Assertion of ownership or control in general.

109. Taking of property.

110. Detention of property.

111. — In general.

112. — Possession or control.

113. — Withholding of possession.

114. — Demand and refusal.

(1). In general.

(2). As constituting conversion or theft or evidence thereof.

(3). As fixing time of conversion or theft.

(4). Necessity of demand and refusal.

(5). — In general.

(6). — Control or possession of property.

(7). — Nature of taking of property.

(8). — Adverse claim or refusal before demand.

(9). — Purchase or sale of property belonging to plaintiff.

(10). — Property acquired by trespass, mistake, or fraud.

(11). Sufficiency of demand.

(12). Compliance or refusal.

115. Use or disposition of property.

116. Purchase or other taking of property from person other than owner.

117. Destruction of or injury to property.

**II. ACTIONS.**

**(A) RIGHT OF ACTION AND DEFENSES.**

120. In general; nature and scope of remedy.

121. Relation to contractual remedies.

122. Statutory provisions and remedies.

123. Title and right to possession of plaintiff.

124. — In general.

125. — Special property or qualified interest or right.

126. Conditions precedent in general.

127. Payment or tender of amount of lien or indebtedness.

**97C. CONVERSION AND CIVIL THEFT****II. ACTIONS.(Cont'd)**

- 128. Return of consideration for contract rescinded.
- 129. Defenses.
- 130. — In general.
- 131. — Good faith or mistake; good intentions.
- 132. — Consent or ratification.
- 133. — Return of property; payment.
- 134. — Title or right to possession of defendant or third person.
- 135. — Abandonment of property.
- 136. — Waiver and estoppel.
- 137. — Privilege and immunity.
- 138. — Contributory and comparative negligence; assumption of risk.
- 139. — Other legal proceedings.
- 140. Persons entitled to sue.
- 141. Persons liable.

**(B) PROCEEDINGS IN GENERAL.**

- 150. In general.
- 151. Jurisdiction.
- 152. Venue.
- 153. Time to sue and limitations.
- 154. Parties plaintiff.
- 155. Parties defendant.
- 156. Bonds or other security.
- 157. Declaration, complaint, or petition.
- 158. — In general.
- 159. — Description of property and averment as to value thereof.
- 160. — Allegations as to title to property and right to possession.
- 161. — Allegations of conversion or theft and time thereof.
- 162. — Allegations of demand and refusal.
- 163. — Allegations as to injury or damages.
- 164. Plea or answer and subsequent pleadings.
- 165. Issues, proof, and variance.
- 166. — In general.
- 167. — Matters and allegations which must be proved by plaintiff.
- 168. — Evidence admissible under declaration, complaint, or petition.
- 169. — Evidence and defenses admissible under plea or answer in general.
- 170. — Defenses admissible under general issue.

**II. ACTIONS.(Cont'd)**

- 171. — Matters which must be pleaded in reply.
- 172. — Variance between allegations and proof.

**(C) EVIDENCE.**

- 180. In general.
- 181. Presumptions and burden of proof.
- 182. Admissibility in general.
- 183. Title and right to possession.
- 184. Acts constituting conversion or theft.
- 185. Nature and extent of injury; damages.
- 186. Weight and sufficiency.
- 187. — In general.
- 188. — Existence, identity, and description of property involved in suit.
- 189. — Title and right to possession.
- 190. — Conversion or theft.
- 191. — Demand and refusal.
- 192. — Nature and extent of injury and value of property; damages.

**(D) DAMAGES.**

- 200. In general; grounds and elements of compensatory damages.
- 201. Nominal damages.
- 202. Special property or qualified interest or right of plaintiff.
- 203. Value of property.
- 204. — In general.
- 205. — Measure of damages in general.
- 206. — Place.
- 207. — Time.
- 208. — Specific articles of personal property in general.
- 209. — Timber, crops, or other products of the soil.
- 210. — Property of fluctuating value.
- 211. — Rights of action and evidences of indebtedness.
- 212. — Title deeds and other documents.
- 213. — Increase of value by act or expenditure after conversion or theft.
- 214. Interest on value of property.
- 215. Special damages additional to value of property.
- 216. Aggravation of damages.
- 217. Mitigation of damages.
- 218. — In general.
- 219. — Return of property to plaintiff.

**97C. CONVERSION AND CIVIL THEFT**

**II. ACTIONS.**(Cont'd)

- 220. — Appropriation of property or proceeds to use of plaintiff.
- 221. Exemplary damages.
- 222. Amount awarded.
- 223. — In general.
- 224. — Exemplary damages.

**(E) TRIAL.**

- 230. In general.
- 231. Dismissal or nonsuit before trial.
- 232. Scope of inquiry and powers of court.
- 233. Questions for jury.
- 234. Instructions.
- 235. Verdict and findings.

**(F) JUDGMENT.**

- 240. In general.
- 241. Effect on title to property of judgment or satisfaction thereof.

**(G) COSTS.**

- 250. In general.
- 251. Attorney fees.

**98. CONVICTS**

**SUBJECTS INCLUDED**

- Persons adjudged guilty of crime; status as convict
- Disabilities and other consequences resulting from such status
- Removal of such disabilities and consequences

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Alien immigrants, exclusion of convicts, see ALIENS, IMMIGRATION, AND CITIZENSHIP
- Civil liabilities to persons injured, reparation, and victims' rights, see CRIMINAL LAW ¶1220
- Conviction, see CRIMINAL LAW and topics dealing with specific offenses
- Escape as criminal offense, see ESCAPE

- Expungement or correction of conviction or criminal record, see CRIMINAL LAW ¶1226(3.1)
- Former conviction as former jeopardy defense, see DOUBLE JEOPARDY
- Former conviction as ground for increased punishment for subsequent offense, see SENTENCING AND PUNISHMENT
- Incidents of conviction, see CRIMINAL LAW XXVI
- Insane or mentally ill convicts, confinement and support, see MENTAL HEALTH
- Labor of convicts and disposition of the products thereof, see PRISONS
- Pardon, clemency, amnesty, reprieve, and commutation, see PARDON AND PAROLE
- Parole, see PARDON AND PAROLE
- Prisoner status, disabilities and other consequences resulting from, see PRISONS
- Prisons, jails, penitentiaries, and reformatories, establishment and maintenance, see INFANTS ¶3122, PRISONS
- Probation, see SENTENCING AND PUNISHMENT IX
- Property subject of or connected with crime, rights to, see CRIMINAL LAW ¶1221
- Regulation of convicts under sentence of imprisonment, see PRISONS
- Sentencing proceedings and punishment imposed, see SENTENCING AND PUNISHMENT
- Witnesses, competency and credibility of convicts as, see WITNESSES

- 20. In general.
- 21. Status, rights, and disabilities.
- 22. Restoration of rights; removal of disabilities.

**99. COPYRIGHTS AND INTELLECTUAL PROPERTY**

**SUBJECTS INCLUDED**

- Nature and incidents of the exclusive rights of an author or other proprietor of a literary

## 99. COPYRIGHTS AND INTELLECTUAL PROPERTY

work or similar production to multiply copies thereof, secured by grant of copyright  
Nature and incidents of the exclusive right of an author in respect of his intellectual productions, and the use or disposition thereof, independent of statutes conferring copyrights

Exercise, protection, and enforcement of rights

Infringements of such rights, and remedies relating thereto

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Employment relationships, intellectual property rights and duties concerning, see LABOR AND EMPLOYMENT V

Patents, see PATENTS

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**99. COPYRIGHTS AND INTELLECTUAL PROPERTY****XVI. ACTIONS AND JUDICIAL PROCEEDINGS—Cont'd**

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- 202. Power to grant and regulate rights.
- 203. — In general.
- 204. — Copyright Clause.
- 205. Statutory nature of copyrights.
- 206. Common-law copyright and literary property in general.
- 207. Relation between copyrights and other forms of intellectual property.
- 208. Statutory and regulatory provisions.
- 209. — In general.
- 210. — Purpose and construction in general.
- 211. — Power to enact; validity.
- 212. — Retroactive or prospective operation.
- 213. What law governs.
- 214. Relation between state and federal law; preemption.

**II. PROTECTED SUBJECT MATTER.****(A) IN GENERAL.**

- 221. In general.
- 222. Particular subject matter.

**(B) COPYRIGHTABLE SUBJECT MATTER.****1. IN GENERAL.**

- 231. In general.

**II. PROTECTED SUBJECT MATTER.(Cont'd)**

- 232. Works of authorship.
- 233. Originality and creativity of work.
- 234. — In general.
- 235. — Independent creation.
- 236. — Quality or merit of work.
- 237. Embodiment of work; fixation in tangible medium.
- 238. Extent of material protected; relation to preexisting material.
- 239. — In general.
- 240. — Public domain material; increments of expression.
- 241. — Material used unlawfully.

**2. PARTICULAR SUBJECT MATTER AS COPYRIGHTABLE.**

- 251. In general.
- 252. Books and other literary works.
- 253. — In general.
- 254. — Advertisements.
- 255. — Catalogs and directories.
- 256. Musical works and accompanying words.
- 257. Dramatic works and accompanying music.
- 258. — In general.
- 259. — Screenplays and teleplays.
- 260. Choreographic works and pantomimes.
- 261. Pictorial, graphic, and sculptural works.
- 262. — In general.
- 263. — Comic books and graphic novels.
- 264. — Advertising graphics and images; logos.
- 265. — Charts and maps.
- 266. — Photographs.
- 267. — Tattoos.
- 268. — Toys.
- 269. Clothes, fabrics, and jewelry; fashion designs.
- 270. Motion pictures and other audiovisual works.
- 271. — In general.
- 272. — Lines of dialogue.
- 273. — Television programs.
- 274. — Video advertising.
- 275. Sound recordings and phonorecords.
- 276. — In general.
- 277. — Radio.
- 278. Architectural works.
- 279. — In general.

**99. COPYRIGHTS AND INTELLECTUAL PROPERTY****II. PROTECTED SUBJECT MATTER.**(Cont'd)

- 280. — Buildings.
- 281. — Architectural drawings, blueprints, and floor plans.
- 282. Adaptations and derivative works.
- 283. — In general.
- 284. — Translations.
- 285. — Musical arrangements.
- 286. — Dramatizations, fictionalizations, and other changes in media.
- 287. — Editorial revisions, annotations, elaborations, or other modifications.
- 288. — Abridgments, condensations, and digests.
- 289. — Improvements, additions, and sequels.
- 290. — Other particular adaptations or derivative works.
- 291. Compilations.
- 292. — In general.
- 293. — Collective works in general.
- 294. — Magazines and periodicals.
- 295. — Anthologies and encyclopedias.
- 296. Computer-related works.
- 297. — In general.
- 298. — Computer programs and software in general.
- 299. — Databases.
- 300. — Internet websites and applications.
- 301. — Computer and video games.
- 302. Miscellaneous particular subject matter.

**3. NONCOPYRIGHTABLE SUBJECT MATTER.**

- 311. In general.
- 312. Public domain material in general.
- 313. Merger doctrine in general.
- 314. Ideas and concepts.
- 315. Principles and discoveries.
- 316. Procedures, processes, and systems; methods of operation.
- 317. Mechanical or utilitarian aspects of works; useful articles.
- 318. Standard or common features of works; scenes a faire.
- 319. — In general.
- 320. — Plots and characters.
- 321. Words and phrases.
- 322. — In general.
- 323. — Common expressions; maxims and cliches.

**II. PROTECTED SUBJECT MATTER.**(Cont'd)

- 324. — Titles of works.
- 325. Facts.
- 326. — In general.
- 327. — Historical facts.
- 328. Blank forms.
- 329. Government works.
- 330. — In general.
- 331. — United States government works.
- 332. — Statutes and law reports.
- 333. Illegal or immoral works.

**(C) SUBJECT MATTER PROTECTED BY COMMON-LAW COPYRIGHT OR AS LITERARY PROPERTY.**

- 341. In general.
- 342. Particular subject matter.

**III. CREATION AND DURATION OF RIGHTS.**

- 351. In general.
- 352. Fixation as commencing rights.
- 353. Publication.
- 354. — In general.
- 355. — General or limited publication.
- 356. — Public display or performance.
- 357. — Public sale or distribution.
- 358. Notice on copies.
- 359. — In general.
- 360. — Form and position.
- 361. — Contribution to collective works.
- 362. — Effect of omission, removal, or error.
- 363. — Cure of defective notice.
- 364. Term of copyright; expiration.
- 365. — In general.
- 366. — Effect of expiration.
- 367. Renewal and extension of term.
- 368. — In general.
- 369. — Posthumous works.
- 370. — Composite and corporate works.
- 371. — Works made for hire.
- 372. — Derivative works.
- 373. — Effect of failure to renew or extend term.
- 374. Common-law copyright and literary property.

**IV. PERSONS ENTITLED TO ASSERT RIGHTS; OWNERSHIP.**

- 381. In general.

**99. COPYRIGHTS AND INTELLECTUAL PROPERTY****IV. PERSONS ENTITLED TO ASSERT RIGHTS; OWNERSHIP.**(Cont'd)

- 382. Authorship in general.
- 383. Multiple owners or authors; collective works.
- 384. — In general.
- 385. — Tenancy in common.
- 386. — Unitary works.
- 387. — Dominant author.
- 388. — Repudiation.
- 389. — Rights as to separate contributions; collective works privilege.
- 390. Works made for hire.
- 391. — In general.
- 392. — “Instance and expense” test.
- 393. — Scope of employment.
- 394. — Contracts and agreements.
- 395. — Independent contractors.
- 396. — Specially ordered or commissioned works.
- 397. Beneficial interests.
- 398. Licensees as owners.
- 399. Ownership by public entities, officers, or employees.
- 400. Ownership of copyright as distinct from ownership of material object.
- 401. Common-law copyright and literary property.

**V. SCOPE AND EXTENT OF RIGHTS.****(A) IN GENERAL.**

- 411. In general.
- 412. Right to control disposition or use in general.

**(B) EXCLUSIVE RIGHTS IN COPYRIGHTED WORKS.**

- 413. In general.
- 414. Limitations on exclusive rights in general.
- 415. Reproduction and distribution rights.
- 416. — In general.
- 417. — Archives and libraries.
- 418. — Persons with disabilities.
- 419. Adaptation rights; preparation of derivative works.
- 420. Performance and display rights.
- 421. — In general.
- 422. — Exempt performances and displays in general.

**V. SCOPE AND EXTENT OF RIGHTS.**(Cont'd)

- 423. — Religious activities.
- 424. — Nonprofit, noncommercial, or educational activities.
- 425. — “Homestyle” exemption.
- 426. — Vending establishments open to the public.
- 427. — Filtering or removal of objectionable content.
- 428. — Secondary transmissions.
- 429. — Ephemeral recordings.
- 430. Rights in pictorial, graphic, and sculptural works.
- 431. Rights in sound recordings.
- 432. — In general.
- 433. — Digital audio transmissions.
- 434. Rights in computer programs.
- 435. — In general.
- 436. — Machine maintenance or repair.
- 437. Rights in architectural works.
- 438. — In general.
- 439. — Pictorial representations.
- 440. — Alterations to and destruction of buildings.
- 441. Common-law copyright and literary property.

**(C) PUBLICATION RIGHTS.**

- 451. In general.
- 452. Right of first publication.

**VI. TRANSFER OF RIGHTS.****(A) IN GENERAL.**

- 461. In general.
- 462. Mode of transfer.
- 463. — In general.
- 464. — Contracts and agreements in general.
- 465. — Assignments, conveyances, and sales.
- 466. Requisites and validity.
- 467. — In general.
- 468. — Formation; offer and acceptance.
- 469. — Form and contents.
- 470. — Execution and delivery.
- 471. — Recordation.
- 472. — Technology and software agreements.
- 473. — Implied agreements.

**99. COPYRIGHTS AND INTELLECTUAL PROPERTY****VI. TRANSFER OF RIGHTS.(Cont'd)**

- 474. Construction, operation, and effect.
- 475. — In general.
- 476. — Duration.
- 477. — Performance and breach in general.
- 478. — Duties, rights, and liabilities.
- 479. — Technology and software agreements.
- 480. Transfer in part; divisibility.
- 481. Transfer of renewal rights.
- 482. Transfer of material object underlying copyright.
- 483. — In general.
- 484. — Computer programs.
- 485. Involuntary transfers.
- 486. Conflicting transfers; priorities.

**(B) LICENSES AND ROYALTIES.****1. IN GENERAL.**

- 491. In general.
- 492. Who may grant license.
- 493. Requisites and validity.
- 494. — In general.
- 495. — Express licenses.
- 496. — Implied licenses.
- 497. — Technology and software licenses.
- 498. Construction, operation, and effect.
- 499. — In general.
- 500. — Duration.
- 501. — Performance and breach in general.
- 502. — Duties, rights, and liabilities.
- 503. — Technology and software licenses.
- 504. — Effect as estoppel; licensee estoppel doctrine.
- 505. Assignment or other transfer of license; sublicenses.
- 506. Conflicting licenses; priorities.
- 507. Resale royalties.

**2. COMPULSORY LICENSES AND ROYALTIES.**

- 511. In general.
- 512. Musical works, sound recordings, and phonorecords; mechanical licenses.
- 513. — In general.
- 514. — Coin-operated phonorecord players; jukeboxes.
- (1). In general.

**VI. TRANSFER OF RIGHTS.(Cont'd)**

- (2). Voluntary or negotiated licenses.
- 515. — Internet applications and digital delivery; webcasts, streams, and downloads.
- 516. Secondary transmissions.
- 517. Noncommercial or public broadcasting.
- 518. License for use by federal government.
- 519. Digital audio recording devices and media.

**(C) TERMINATION OF TRANSFERS AND LICENSES.**

- 521. In general.
- 522. Termination of copyright transfers and licenses.
- 523. — In general.
- 524. — Transfers and licenses subject to termination.
- 525. — Persons entitled to terminate.
- 526. — Time for termination.
- 527. — Notice of termination.
- 528. Effect of termination.
- 529. Post-termination transfers.

**VII. VIOLATIONS OF RIGHTS.****(A) IN GENERAL.**

- 531. In general.
- 532. Infringement in general.
- 533. Conversion or theft.
- 534. Misappropriation.
- 535. Unjust enrichment.

**(B) COPYRIGHT INFRINGEMENT.****1. IN GENERAL.**

- 541. In general.
- 542. Nature and elements in general.
- 543. — In general.
- 544. — Infringement of reproduction and distribution rights.
- 545. — Infringement of performance and display rights.
- 546. Acts constituting copyright infringement in general.
- 547. Copying.
- 548. — In general.
- 549. — Opportunity to copy; access.
- 550. — Independent creation.
- 551. — Common source.
- 552. Similarity.



**99. COPYRIGHTS AND INTELLECTUAL PROPERTY****VII. VIOLATIONS OF RIGHTS.(Cont'd)**

- 553. — In general.
- 554. — Substantial similarity in general.
- 555. — Intrinsic and extrinsic similarity.
- 556. — Literal and non-literal similarity.
  - (1). In general.
  - (2). Comprehensive non-literal similarity.
  - (3). Fragmented literal similarity.
  - (4). Verbatim or paraphrase.
- 557. — Trivial or de minimis similarity.
- 558. — “Total concept and feel” test.
- 559. — Viewpoint for making comparison; “ordinary observer” test.
- 560. Nature of infringing medium.
- 561. Intent or purpose.
- 562. — In general.
- 563. — Willfulness.
- 564. Volitional conduct; causation.
- 565. Strict liability.

**2. INFRINGEMENT OF PARTICULAR WORKS.**

- 571. In general.
- 572. Books and other literary works.
- 573. — In general.
- 574. — Copying; access.
- 575. — Similarity.
- 576. — Intent or purpose; willfulness.
- 577. — Volitional conduct; causation.
- 578. Musical works and accompanying words.
- 579. — In general.
- 580. — Copying; access.
- 581. — Similarity.
- 582. — Intent or purpose; willfulness.
- 583. — Volitional conduct; causation.
- 584. Dramatic works and accompanying music.
- 585. Choreographic works and pantomimes.
- 586. Pictorial, graphic, and sculptural works.
- 587. — In general.
- 588. — Copying; access.
- 589. — Similarity.
- 590. — Intent or purpose; willfulness.
- 591. — Volitional conduct; causation.
- 592. Clothes, fabrics, and jewelry; fashion designs.
- 593. Motion pictures and other audiovisual works.
- 594. — In general.

**VII. VIOLATIONS OF RIGHTS.(Cont'd)**

- 595. — Copying; access.
- 596. — Similarity.
- 597. — Intent or purpose; willfulness.
- 598. — Volitional conduct; causation.
- 599. Sound recordings and phonorecords.
- 600. Architectural works.
- 601. Computer-related works.
- 602. — In general.
- 603. — Computer programs and software in general.
- 604. — Databases.
- 605. — Internet websites and applications.
- 606. — Computer and video games.

**3. ADAPTATIONS AND DERIVATIVE WORKS.**

- 611. In general.
- 612. Adaptations or derivative works as infringing.
- 613. — In general.
- 614. — Translations.
- 615. — Musical arrangements.
- 616. — Dramatizations, fictionalizations, and other changes in media.
- 617. — Editorial revisions, annotations, elaborations, or other modifications.
- 618. — Abridgments, condensations, and digests.
- 619. — Improvements, additions, and sequels.
- 620. — Other particular adaptations or derivative works.
- 621. Infringement of derivative works.

**4. COMPILATIONS AND COLLECTIVE WORKS.**

- 631. In general.
- 632. Compilations or collective works as infringing.
- 633. — In general.
- 634. — Magazines and periodicals.
- 635. — Anthologies and encyclopedias.
- 636. Infringement of compilations and collective works.

**5. HOME RECORDING.**

- 641. In general.
- 642. Digital audio recording devices and media.

**99. COPYRIGHTS AND INTELLECTUAL PROPERTY****(C) OTHER COPYRIGHT VIOLATIONS.****1. IN GENERAL.**

- 651. In general.
- 652. Unauthorized fixation and trafficking in sound recordings and music videos; bootlegging.
- 653. Unauthorized use of pre-1972 sound recordings.

**2. CIRCUMVENTION OF TECHNOLOGICAL MEASURES.**

- 661. In general.
- 662. Copyright protection and management systems.
- 663. — In general.
- 664. — Copyright management information.
- 665. Serial copy management systems.

**(D) VIOLATIONS OF COMMON-LAW COPYRIGHT OR LITERARY PROPERTY RIGHTS.**

- 671. In general.
- 672. Infringement in general.
- 673. Particular works.

**(E) PERSONS LIABLE FOR VIOLATIONS.**

- 681. In general.
- 682. Secondary liability in general.
- 683. Vicarious liability and respondeat superior.
- 684. Contributory liability.
- 685. — In general.
- 686. — Knowledge.
- 687. — Materiality of contribution.
- 688. Inducement.
- 689. Liability of co-owners.
- 690. Liability of officers, agents, and employees.
- 691. Liability of states, state instrumentalities, and state officers and employees.
- 692. Liabilities of parties in chain of distribution.
- 693. Joint and several liability.
- 694. Contribution and indemnity.

**VIII. DEFENSES AND PERMITTED USES.****(A) IN GENERAL.**

- 701. In general.
- 702. Immunity in general.

**VIII. DEFENSES AND PERMITTED USES.(Cont'd)**

- 703. Use under license or other transfer of rights.
- 704. — In general.
- 705. — Exceeding scope of license.
- 706. — Post-termination conduct.
- 707. Limitations on liability relating to material online; “safe harbor”.
- 708. — In general.
- 709. — Service providers.
- 710. — Repeat infringement.
- 711. Innocent infringement.

**(B) EFFECT OF TRANSFER OF PARTICULAR COPY; FIRST-SALE DOCTRINE.**

- 721. In general.
- 722. As defense to infringement.
- 723. Relation to right of distribution.
- 724. Nature of initial transfer; what constitutes “first sale”.
- 725. — In general.
- 726. — Involuntary transfers.
- 727. — Gratuitous transfers.
- 728. — Licenses.
- 729. — Rental, lease, or loan.
- 730. Manner of transferee’s use or disposal of copy.
- 731. — In general.
- 732. — Rental, lease, or loan.
- 733. — Performance or display.
- 734. Pirated or unlawfully made copies.
- 735. Modification of doctrine by parties.
- 736. Common-law copyright and literary property.

**(C) FAIR USE.**

- 741. In general.
- 742. As defense to infringement.
- 743. Factors considered in general.
- 744. Purpose and character of use.
- 745. — In general.
- 746. — Commercial or noncommercial use.
- 747. — Transformative use.
- 748. — Teaching, scholarship, and research; educational use.
- 749. — Criticism, comment, and news reporting.
- 750. — Parody or satire.

**99. COPYRIGHTS AND INTELLECTUAL PROPERTY****VIII. DEFENSES AND PERMITTED  
USES.(Cont'd)**

- 751. Nature of protected work used.
- 752. — In general.
- 753. — Publication status of work used.
- 754. Particular works used.
- 755. — In general.
- 756. — Books and other literary works.
- 757. — Musical works and accompanying words.
- 758. — Dramatic works and accompanying music.
- 759. — Choreographic works and pantomimes.
- 760. — Pictorial, graphic, and sculptural works.
- 761. — Clothes, fabrics, and jewelry; fashion designs.
- 762. — Motion pictures and other audiovisual works.
- 763. — Sound recordings and phonorecords.
- 764. — Architectural works.
- 765. — Computer-related works.
- 766. — Adaptations and derivative works.
- 767. — Compilations and collective works.
- 768. Amount and substantiality of portion used.
- 769. — In general.
- 770. — Extracts and quotations.
- 771. Effect of use on market for or value of protected work.
- 772. Common-law copyright and literary property.
- 773. — In general.
- 774. — Particular works.

**IX. LOSS OF RIGHTS.**

- 781. In general.
- 782. Abandonment, surrender, or waiver in general.
- 783. Dedication to public.
- 784. Publication.
- 785. Estoppel.
- 786. Acquiescence.
- 787. Waiver or other loss of defensive rights.

**X. MISUSE OF RIGHTS.**

- 791. In general.

**X. MISUSE OF RIGHTS.(Cont'd)**

- 792. As defense to infringement.
- 793. What constitutes misuse.

**XI. RIGHTS IN SEMICONDUCTOR CHIP  
PRODUCTS AND MASK WORKS.**

- 801. In general.
- 802. Works protected.
- 803. Creation and duration of rights.
- 804. Persons entitled to assert rights; ownership.
- 805. Scope and extent of rights; violations.
- 806. — In general.
- 807. — Reverse engineering.
- 808. Persons liable for violations.
- 809. Defenses and permitted uses.
- 810. Transfer of rights.
- 811. Waiver or other loss of rights.
- 812. Misuse of rights.

**XII. RIGHTS IN ORIGINAL DESIGNS  
OF USEFUL ARTICLES.**

- 821. In general.
- 822. Vessel hulls and decks.
- 823. Other particular articles.

**XIII. RIGHTS OF ATTRIBUTION AND  
INTEGRITY; MORAL RIGHTS.**

- 831. In general.
- 832. Works protected.
- 833. — In general.
- 834. — Works of visual art.
  - (1). In general.
  - (2). Works made for hire.
  - (3). Works not subject to copyright protection.
- 835. — Works of fine art.
- 836. — Permanence of work; temporary works.
- 837. — Works of recognized stature.
- 838. Creation and duration of rights.
- 839. Persons entitled to assert rights; ownership.
- 840. — In general.
- 841. — Joint works; co-owners.
- 842. — Relation to ownership of other rights.
- 843. Scope and extent of rights; violations.
- 844. — In general.

**99. COPYRIGHTS AND INTELLECTUAL PROPERTY****XIII. RIGHTS OF ATTRIBUTION  
AND INTEGRITY; MORAL  
RIGHTS.(Cont'd)**

- 845. — Claims of authorship; use of author's name.
- 846. — Distortion, mutilation, or other modification of work.
  - (1). In general.
  - (2). Effect of passage of time or inherent nature of materials.
- 847. — Destruction of work.
- 848. — Conservation or public presentation of work.
- 849. — Removal of work incorporated or installed in a building.
- 850. Persons liable for violations.
- 851. Defenses and permitted uses.
- 852. Transfer of rights.
- 853. Waiver or other loss of rights.
- 854. Misuse of rights.

**XIV. INTERNATIONAL ISSUES.**

- 861. In general.
- 862. Extraterritorial application of laws.
- 863. Copyright protection in general.
- 864. — In general.
- 865. — Nationality or domicile of author of work.
- 866. — Place of fixation, embodiment, or publication of work.
- 867. Works in public domain; restoration of copyright.
- 868. — In general.
- 869. — Term and ownership of restored copyright.
- 870. — Notice of intent to enforce restored copyright; reliance parties.
- 871. Infringement or other violation premised on foreign conduct.
- 872. — In general.
- 873. — Predicate acts.
- 874. Copies made or sold abroad; imports and exports.
- 875. — In general.
- 876. — Gray-market goods.
- 877. Operation of first-sale doctrine.

**XV. REGISTRATION AND ADMINISTRATION.****(A) IN GENERAL.**

- 881. In general.

**XV. REGISTRATION AND  
ADMINISTRATION.(Cont'd)**

- 882. Licensing organizations and collectives in general.

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- 978. Rights in original designs of useful articles; vessel hulls and decks.

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- 1067. — Licenses and royalties.
  - (1). In general.
  - (2). Performance and breach.
  - (3). Compulsory licenses and royalties.
- 1068. — Violations of rights.
  - (1). In general.
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  - (3). — In general.
  - (4). — Copying, access, and similarity.
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- 1069. — Defenses and permitted uses.
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  - (3). Fair use.
  - (4). Common-law copyright and literary property.
- 1070. — Loss or misuse of rights.
- 1071. — Rights in semiconductor chip products and mask works.
- 1072. — Rights in original designs of useful articles; vessel hulls and decks.

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Their appointment, qualification and tenure of office

Rights, powers, duties, acts, proceedings and liabilities of coroners, their deputies and assistants, in general

Inquests and proceedings thereon

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Autopsies and dead bodies in general, see **DEAD BODIES**

Effect of inquests and findings therein in—  
Homicide prosecutions, see **HOMICIDE**  
Insurance cases, see **INSURANCE**

Election of coroners, see **ELECTION LAW**

Sheriffs, powers and acts of coroners in performing duties of, see **SHERIFFS AND CONSTABLES**

- 1. Nature of office.
- 2. Creation and abolition of office.



**100. CORONERS**

3. Appointment, election, eligibility and qualification.
4. Deputies and assistants.
5. Justice of the peace or other officer acting as coroner.
6. Term of office, vacancies, and holding over.
7. Compensation and fees.
8. Powers and duties in general.
9. Inquests.
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16. — View of body.
17. — Evidence.
18. — Verdict and inquisition.
19. — Arrest of person charged.
20. — Disposition of property found on body.
21. — Costs and expenses.
22. Effect of inquisition.
23. Liabilities for negligence or misconduct.
24. Liabilities on official bonds.
25. Criminal responsibility.

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**101. CORPORATIONS AND  
BUSINESS ORGANIZATIONS**
**SUBJECTS INCLUDED**

Bodies corporate in general  
 Creation, organization, and dissolution  
 Rights, powers, duties, and liabilities of such bodies, their members and officers, as among themselves and as to others, incident to corporate existence, and legal proceedings for enforcement thereof  
 Mergers, acquisitions, and reorganizations  
 Non-profit corporations in general  
 Unincorporated business organizations in general

Sole proprietorships  
 Business, trade, and professional associations  
 Joint stock companies  
 Business trusts  
 Limited liability companies

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Associations in general, see ASSOCIATIONS  
 Joint ventures, see JOINT VENTURES  
 Limited liability partnerships, see PARTNERSHIP  
 Municipal and other public corporations, see EDUCATION, MUNICIPAL CORPORATIONS, and other specific topics  
 Native village corporations, see INDIANS ¶228  
 Particular businesses or purposes—  
   Abstract companies, see ABSTRACTS OF TITLE ¶2  
   Banking companies, see FINANCE, BANKING, AND CREDIT IV  
   Beneficial associations, see ASSOCIATIONS  
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   Building and loan associations, see FINANCE, BANKING, AND CREDIT IV  
   Canal companies, see WATER LAW ¶2927  
   Cemetery companies, see CEMETERIES ¶5  
   Charitable societies, see CHARITIES  
   Churches and other bodies formed for religious purposes, see RELIGIOUS SOCIETIES  
   Clubs, see ASSOCIATIONS  
   Common lands, proprietors of, see COMMON LANDS ¶6  
   Credit unions and cooperative banks, see FINANCE, BANKING, AND CREDIT IV  
   Drainage companies, see WATER LAW ¶2733  
   Electric companies, see ELECTRICITY ¶3  
   Exchanges, see EXCHANGES  
   Ferry companies, see FERRIES ¶6  
   Gas companies, see GAS ¶4

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS**

Homeowners' associations, condominium associations, cooperative associations, and similar bodies formed in connection with common interest communities, see COMMON INTEREST COMMUNITIES

Insurance companies, see INSURANCE IV

Irrigation and ditch companies, see WATER LAW XIII(C)3

Labor unions, see LABOR AND EMPLOYMENT XII(B)

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Lodges and fraternal organizations, see ASSOCIATIONS

Mining companies, see MINES AND MINERALS III(B)

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Railroad companies, see RAILROADS II

Savings and loan associations, see FINANCE, BANKING, AND CREDIT IV

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1013. — Parent and subsidiary corporations.

1014. Kinds and classes of corporations.

*Non-profit corporations, see ⌚3351. Public and quasi-municipal corporations, see MUNICIPAL CORPORATIONS ⌚2. Public service corporations, see PUBLIC UTILITIES ⌚103.*

1015. — In general.

1016. — Private corporations in general.

1017. — Corporations sole.

*See also RELIGIOUS SOCIETIES.*

1018. — Closely held corporations.

1019. — Cooperatives.

*Agricultural cooperatives, see AGRICULTURE ⌚6. Electric cooperatives, see ELECTRICITY ⌚8.1(3).*

1020. — Professional corporations.

*Law firms, see ATTORNEYS AND LEGAL SERVICES IV.***II. DISREGARDING CORPORATE ENTITY; PIERCING CORPORATE VEIL.**

1030. In general.

1031. Nature of remedy.

1032. Reluctance to apply remedy.

1033. Reverse piercing of corporate veil.

1034. Piercing corporate veil for benefit of shareholder.

1035. Reasons and justifications.

1036. — In general.

1037. — Justice and equity in general.

1038. — Fraud or illegal acts in general.

1039. — Alter ego in general.

1040. — Instrumentality in general.

1041. — Agency in general.

1042. Factors considered.

1043. — In general.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****II. DISREGARDING CORPORATE ENTITY;  
PIERCING CORPORATE  
VEIL.(Cont'd)**

- 1044. — Domination or control by shareholder.
- 1045. — Undercapitalization.
- 1046. — Commingling of funds or assets.
- 1047. — Separate books.
- 1048. — Non-observance of corporate formalities.
- 1049. — Number and relation of shareholders.
- 1050. Separate corporations; disregarding separate entities.
- 1051. — In general.
- 1052. — Related corporations in general.
- 1053. — Parent and subsidiary corporations in general.
- 1054. — Single business enterprise.
- 1055. — Common enterprise.
- 1056. — Identity of directors, officers, or shareholders.
- 1057. Particular occasions for determining corporate entity.
- 1058. — In general.
- 1059. — Contracts in general.
- 1060. — Debts and obligations of corporation in general.
- 1061. — Evasion or violation of law or orders in general.
- 1062. — Family and domestic relations.
- 1063. — Environmental liabilities and violations.
- 1064. — Labor and employment liabilities and violations.
- 1065. — Insolvency, bankruptcy, and receivership.
- 1066. — Equipment leases.
- 1067. — Landlord and tenant.
- 1068. — Liens, bonds, notes, and mortgages.
- 1069. — Sale and transfer of property.
- 1070. — Shareholders, officers, and corporation, rights inter se.
- 1071. — Taxation in general.
- 1072. — Income and excess profits tax.
- 1073. — Torts in general.
- 1074. — Fraud.
- 1075. — Negligence.

**II. DISREGARDING CORPORATE ENTITY;  
PIERCING CORPORATE  
VEIL.(Cont'd)**

- 1076. — Patent, copyright, and trademark ownership and infringement.
- 1077. — Wills and decedents' estates.
- 1078. — Remedies and procedure.
  - (1). In general.
  - (2). Jurisdiction and venue in general.
  - (3). Jurisdiction over shareholders, directors, or officers of foreign corporations.
  - (4). Parties and standing.
  - (5). Process.
  - (6). Arbitration.
- 1079. Actions to pierce corporate veil.
- 1080. — In general.
- 1081. — Jurisdiction and venue.
- 1082. — Persons entitled to sue; standing.
- 1083. — Time to sue; limitations and laches.
- 1084. — Parties.
- 1085. — Pleading.
  - (1). In general.
  - (2). Justice and equity in general.
  - (3). Fraud or illegal acts in general.
  - (4). Alter ego, instrumentality, or agency in general.
  - (5). Domination or control by shareholder.
  - (6). Undercapitalization.
  - (7). Commingling of funds or assets.
  - (8). Non-observance of corporate formalities.
  - (9). Number and relation of shareholders.
  - (10). Separate corporations.
- 1086. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Admissibility.
  - (4). Weight and sufficiency.
  - (5). — In general.
  - (6). — Justice and equity in general.
  - (7). — Fraud or illegal acts in general.
  - (8). — Alter ego, instrumentality, or agency in general.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****II. DISREGARDING CORPORATE ENTITY;  
PIERCING CORPORATE  
VEIL.** (Cont'd)

- (9). — Domination or control by shareholder.
- (10). — Undercapitalization.
- (11). — Commingling of funds or assets.
- (12). — Non-observance of corporate formalities.
- (13). — Number and relation of shareholders.
- (14). — Separate corporations.
- (15). — Degree of proof.
- 1087. — Trial.
- 1088. — Questions of law or fact.
- 1089. — Instructions.
- 1090. — Costs and attorney fees.

**III. INCORPORATION AND ORGANIZATION.****(A) IN GENERAL.**

- 1100. In general.
- 1101. Power to incorporate.
- 1102. Constitutional and statutory provisions.
- 1103. — In general.
- 1104. — Special charters or acts.
  - (1). In general.
  - (2). Grant or enactment.
  - (3). Validity.
  - (4). Operation and effect in general.
  - (5). Acceptance by incorporators.
  - (6). Organization of corporation.
  - (7). Amendment or repeal.
- 1105. — General statutes.
  - (1). In general.
  - (2). Enactment and provisions.
  - (3). Validity.
  - (4). Operation and effect in general.
  - (5). Retroactivity.
  - (6). Amendment or repeal.
- 1106. Incorporation in different states.

**(B) INCORPORATORS AND PROMOTERS.**

- 1110. In general.
- 1111. Capacity and qualifications of incorporators.
- 1112. Number of incorporators.
- 1113. Who is a promoter.

**III. INCORPORATION AND  
ORGANIZATION.** (Cont'd)

- 1114. Acts and agreements of incorporators and promoters in general.
- 1115. — In general.
- 1116. — Fiduciary nature of relation.
- 1117. — Compensation for services as incorporator or promoter.
- 1118. — Liability to corporation, subscribers, and shareholders in general.
- 1119. — Sale of property to corporation.
- 1120. — Purchase of property for corporation.
- 1121. — Liability to third persons.
- 1122. — Rights and liabilities of incorporators and promoters to each other.
- 1123. Acts and agreements of incorporators and promoters as binding on corporation.
- 1124. — In general.
- 1125. — Validity.
- 1126. — Liability of corporation for contracts of incorporators and promoters in general.
- 1127. — Adoption or ratification by corporation or shareholders in general.
- 1128. — Adoption or ratification by acceptance of benefits.
- 1129. — Rights of corporation on contracts of incorporators and promoters.
- 1130. — Notice or knowledge of incorporators and promoters imputed to corporation.
- 1131. Rights and liabilities arising out of incorporation of sole proprietorships, partnerships, and associations.
- 1132. Actions by or against incorporators, promoters, or corporation.

**(C) PURPOSES OF INCORPORATION.**

- 1140. In general.
- 1141. Limitation of personal liability of shareholders.
- 1142. Obtaining financial or tax advantages.
- 1143. General business purposes.
- 1144. Specific purposes.
- 1145. — In general.
- 1146. — Manufacturing, agricultural, mining, or mechanical purposes.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS**

*Mining corporations, see also MINES AND MINERALS* §102.

- 1147. — Agency and brokerage.
- 1148. — Professional corporations.
- 1149. Unlawful purpose.

**(D) APPLICATION AND CERTIFICATE OR ARTICLES OF INCORPORATION.**

- 1160. In general.
- 1161. Necessity and amount of capital subscribed and paid.
- 1162. Certificate or articles of incorporation.
- 1163. — In general.
- 1164. — Form and requisites.
- 1165. — Recording and filing.
- 1166. — Construction, operation, and effect.
- 1167. — Amendment.
  - (1). In general.
  - (2). Form and requisites: recording and filing.
  - (3). Proceedings for amendment in general.
  - (4). Assent of shareholders.
  - (5). Construction, operation, and effect.
- 1168. Payment of incorporation fees or taxes.
- 1169. Approval and grant of incorporation.
- 1170. Publication of notice.

**(E) ORGANIZATION OF CORPORATION.**

- 1180. In general.
- 1181. Organizational meeting of incorporators, directors, or shareholders.

**(F) VALIDITY OF INCORPORATION.**

- 1190. In general.
- 1191. Defective incorporation or organization in general.
- 1192. Official recognition of corporation.
- 1193. De facto corporations.
- 1194. — In general.
- 1195. — Nature and requisites in general.
- 1196. — Ineffectual attempt to incorporate and organize.
- 1197. — Acting or carrying on business as a corporation.
- 1198. Attacking validity of incorporation.  
*Estoppel, see* §1223.
- 1199. — In general.

**III. INCORPORATION AND ORGANIZATION.**(Cont'd)

- 1200. — Persons entitled.
- 1201. — Collateral attack.

**IV. CORPORATE EXISTENCE AND FRANCHISE.****(A) IN GENERAL.**

- 1210. In general.
- 1211. Constitutional and statutory provisions.
- 1212. Nature of franchise to be a corporation.
- 1213. Evidence of corporate existence.
- 1214. — In general.
- 1215. — Presumptions and burden of proof.
- 1216. — Particular methods of establishing corporate existence in general.
- 1217. — Evidence by reputation.
- 1218. — Admissions and recognition by dealings.
- 1219. — Acts of incorporation, certificate or articles of incorporation, acceptance, records, or user.
- 1220. — Authenticated copy of official record.
- 1221. — Weight and sufficiency.
- 1222. Knowledge of corporate existence.
- 1223. Estoppel to allege or deny corporate existence.
- 1224. — In general.
- 1225. — Statutory provisions.
- 1226. — Estoppel of third persons.
  - (1). In general.
  - (2). Estoppel by contracts and dealings in general.
  - (3). Estoppel by execution or acceptance of notes or other evidence of indebtedness.
  - (4). Estoppel by admission in action against corporation.
- 1227. — Estoppel of subscribers, shareholders, and members.
- 1228. — Estoppel of incorporators and promoters.
- 1229. — Estoppel of directors and officers.
- 1230. — Estoppel of corporation.
- 1231. Commencement.
- 1232. Duration.
- 1233. Extension or renewal.



**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****IV. CORPORATE EXISTENCE AND  
FRANCHISE.(Cont'd)**

1234. Unauthorized assumption of corporate franchise.

**(B) REQUISITES AND INCIDENTS OF  
CORPORATE EXISTENCE.**

1240. In general.  
 1241. Corporate name.  
*Use as trademark, see TRADEMARKS.*  
 1242. — In general.  
 1243. — Necessity.  
 1244. — Names which may be adopted.  
     (1). In general.  
     (2). Words showing incorporation.  
 1245. — Mode of acquisition.  
 1246. — Right to and manner of use in general.  
 1247. — Conflicting names; similarity and confusion.  
     (1). In general.  
     (2). Personal names in general.  
     (3). Particular names.  
 1248. — Misnomer.  
 1249. — Fictitious or assumed name.  
 1250. — Change of name.  
 1251. — Unauthorized assumption of corporate name.  
 1252. — Actions and proceedings.  
 1253. Corporate seal.  
 1254. Domicile or place of business.  
 1255. — In general.  
 1256. — Designation or change of registered office or place of business.  
 1257. — Designation or change of agent for service of process.  
 1258. Bylaws.  
 1259. — In general.  
 1260. — Power to make.  
 1261. — Validity in general.  
 1262. — Adoption, amendment, and repeal.  
 1263. — Construction, operation, and effect.  
 1264. — Violation and enforcement.  
 1265. Books and records.  
 1266. Maintaining corporate franchise.  
 1267. — In general.  
 1268. — Annual filing requirements and other reports.

**V. CAPITAL AND STOCK.****(A) NATURE AND AMOUNT OF  
CAPITAL AND SHARES.**

1280. In general.  
 1281. Constitutional and statutory provisions.  
 1282. Capital of non-stock corporations.  
 1283. What constitutes capital stock.  
 1284. — In general.  
 1285. — Distinction between debt and equity; capital contributions.  
*Making and issuance of debt instruments, see ¶2462.*  
 1286. — Surplus.  
 1287. Amount of capital.  
 1288. Division of capital into shares.  
 1289. — In general.  
 1290. — Par value.  
 1291. — Classes of stock in general.  
 1292. — Preferred stock.  
 1293. — Conversion.  
 1294. Nature of property in shares.  
 1295. — In general.  
 1296. — Intangible property.  
 1297. — Personal property.  
 1298. Increase of capital stock.  
 1299. Reduction of capital stock.  
 1300. Retirement or redemption of stock; treasury stock.  
*Agreements to redeem, see ¶1342.*  
 1301. Stock splits and reverse stock splits.

**(B) SUBSCRIPTION TO STOCK.**

1310. In general.  
 1311. Disposition of stock in general.  
 1312. — In general.  
 1313. — New stock.  
 1314. — Treasury stock.  
 1315. Authority to receive subscriptions.  
 1316. Right to subscribe or to issuance of stock.  
 1317. — In general.  
 1318. — Professional corporations.  
 1319. — Options and warrants.  
*Options to buy or sell, see ¶1412. Stock options as compensation, see ¶1817.*  
     (1). In general.  
     (2). Nature of option or warrant.  
     (3). Validity.  
     (4). Operation and effect; exercise.  
 1320. — Preemptive rights of existing shareholders.



**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****V. CAPITAL AND STOCK.(Cont'd)**

- (1). In general.
- (2). New stock.
- (3). Treasury stock.
- 1321. Contract of subscription.
- 1322. — In general.
- 1323. — Making, requisites, and validity in general.
- 1324. — Consideration.
- 1325. — Construction, operation, and effect.
- 1326. — Rights and liabilities of subscribers.
- 1327. Subscription or sales through promoters or agents.
- 1328. — In general.
- 1329. — Underwriters.
- 1330. Subscriptions obtained by misrepresentation.
- 1331. — In general.
- 1332. — Misrepresentation and reliance thereon in general.  
*See also SECURITIES REGULATION.*
- 1333. — Authority of promoter or agent to bind corporation.
- 1334. — Facts or opinions.
- 1335. — Particular misrepresentations.
  - (1). In general.
  - (2). Stock subscribed or to be subscribed.
  - (3). Nature of business and condition of company.
- 1336. — Knowledge of subscriber or opportunity to ascertain truth of representation.
- 1337. — Estoppel, waiver, or laches.
- 1338. — Actions.
  - (1). In general.
  - (2). Evidence.
  - (3). Remedies of subscribers; rescission.
- 1339. Conditional subscriptions.
- 1340. Collateral agreements.
- 1341. — In general.
- 1342. — Agreements to redeem or repurchase.  
*Restrictions and agreements on right to transfer shares, see ¶1404.*
  - (1). In general.
  - (2). Validity in general.

**V. CAPITAL AND STOCK.(Cont'd)**

- (3). Upon death of shareholder.
- (4). Upon termination of service as employee.
- (5). Solvency of corporation or sufficiency of surplus.
- (6). Valuation and purchase price.
- 1343. — Actions to enforce agreements.
- 1344. Withdrawal or cancellation.
- 1345. Release or discharge.
- 1346. Assignment.
- 1347. Oversubscription.
- 1348. Allotment or apportionment of shares.
- 1349. Payment.
- 1350. Calls or assessments on unpaid subscriptions.
- 1351. — In general.
- 1352. — Power and duty to make.
- 1353. — Demand and notice.
- 1354. — Estoppel to allege informalities or invalidity.
- 1355. — Time when, and amounts for which, assessments may be levied.
- 1356. — Liability for interest or penalty.
- 1357. Actions on subscriptions.
- 1358. — In general.
- 1359. — Right of action and defenses.
- 1360. — Nature and form of remedy.
- 1361. — Jurisdiction and venue.
- 1362. — Time to sue; limitations and laches.
- 1363. — Parties.
- 1364. — Pleading.
- 1365. — Evidence.
- 1366. — Trial, judgment, and damages.
- 1367. Forfeiture of unpaid shares.

**(C) ISSUANCE OF STOCK.**

- 1370. In general.
- 1371. Power and authority to issue in general.
- 1372. Stock certificates in general.
- 1373. — In general.
- 1374. — Nature and necessity of certificate.
- 1375. — Form and requisites of certificate.  
*Restrictions on transfer, see ¶1407.*
- 1376. — Loss of certificate.
- 1377. Persons entitled to stock or certificates.
- 1378. Issuance and delivery of stock or certificates in general.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****V. CAPITAL AND STOCK.(Cont'd)**

- 1379. Consideration.
- 1380. — In general.
- 1381. — Unauthorized or insufficient consideration in general.
- 1382. — Consideration less than par value.
- 1383. — Property.
- 1384. — Services.
  - (1). In general.
  - (2). Future services.
- 1385. — Notes or other securities.
- 1386. Irregular or erroneous issue.
- 1387. Fraudulent issue.
- 1388. Overissue.
- 1389. Ratification of unauthorized issue.
- 1390. Estoppel to allege invalidity.
- 1391. Rights and remedies as to invalid stock.
- 1392. — In general.
- 1393. — Original purchasers or holders.
- 1394. — Subsequent purchasers in general.
- 1395. — Bona fide purchasers.
- 1396. Cancellation of shares or certificates.
- 1397. Actions.

**(D) TRANSFER OF SHARES.**

*Sale or transfer of all or a controlling interest of stock, see X(D).*

- 1400. In general.
- 1401. Assignability of shares in general.
- 1402. Statutory provisions.
- 1403. Negotiability of certificates.
- 1404. Restrictions and agreements on right to transfer.
 

*Agreements to redeem, see 1342.*
- 1405. — In general.
- 1406. — Right of first refusal of corporation and other shareholders; buy-sell agreements and bylaw provisions.
  - (1). In general.
  - (2). Validity.
  - (3). Construction and operation in general.
  - (4). Valuation and purchase price.
- 1407. — Restriction stated on certificate.
- 1408. — Professional corporations.
- 1409. — Actions to enforce restriction or right of first refusal.
- 1410. Requisites of transfer in general.

**V. CAPITAL AND STOCK.(Cont'd)**

- 1411. Transfer on death; beneficiary designation.
- 1412. Options to buy or sell.
 

*Options or warrants to subscribe, see 1319. Stock options as compensation, see 1817.*
- 1413. Sales.
- 1414. — In general.
- 1415. — What law governs.
- 1416. — Contract.
  - (1). In general.
  - (2). Requisites and validity in general.
  - (3). Fraud and misrepresentation.
  - (4). Rescission.
  - (5). Performance or breach.
  - (6). Construction, operation, and effect.
  - (7). Warranties and agreements to repurchase.
- 1417. — Actions.
  - (1). In general.
  - (2). Conditions precedent to action or defense.
  - (3). Jurisdiction and venue.
  - (4). Persons entitled to sue; standing.
  - (5). Time to sue; limitations and laches.
  - (6). Pleading.
  - (7). Evidence.
  - (8). Trial and judgment.
  - (9). Damages or amount of recovery.
  - (10). Costs and attorney fees.
- 1418. Judicial sales.
- 1419. Pledges.
 

*See also SECURED TRANSACTIONS.*
- 1420. — In general.
- 1421. — Title to stock pledged.
- 1422. — Rights and remedies of pledgees.
- 1423. — Pledgees as bona fide purchasers.
- 1424. — Sale or other disposition of stock and failure to sell or convert.
- 1425. — Conversion of stock before default.
- 1426. — Actions.
- 1427. — Transfer of stock by pledgee.
- 1428. — Operation and effect in general.
- 1429. — Return of stock under agreement or on payment or discharge.
- 1430. — Enforcement.
- 1431. Assignment of certificate.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****V. CAPITAL AND STOCK.(Cont'd)**

- 1432. — In general.
- 1433. — Mode and sufficiency in general.
- 1434. — Blank transfer, stock power, and power of attorney.
- 1435. Surrender and reissue of certificate.
- 1436. Registration or transfer on corporate books.
- 1437. — In general.
- 1438. — Necessity.
- 1439. — Duty to make or allow.
- 1440. — Persons entitled.
  - (1). In general.
  - (2). Bona fide purchasers.
- 1441. — Making and sufficiency.
- 1442. — Liabilities, remedies, and actions for refusal.
  - (1). In general.
  - (2). Conversion.
  - (3). Transfer agents.
- 1443. — Liabilities, remedies, and actions for erroneous or wrongful transfer.
  - (1). In general.
  - (2). Conversion.
  - (3). Transfer agents.
- 1444. — Rights and liabilities of owner of stock registered in another's name.
- 1445. — Rights of creditors of transferor.
- 1446. Ratification of invalid transfer.
- 1447. Setting aside transfer.
- 1448. Evidence as to transfer.
- 1449. Questions for jury as to transfer.
- 1450. Estoppel to allege or deny transfer.
- 1451. Effect of transfer.
- 1452. — In general.
- 1453. — Liability on unpaid subscription or assessment.
- 1454. — Conflicting assignments.
- 1455. — Lost or stolen certificate.
- 1456. — Alteration or forgery of certificate or transfer.
- 1457. — Bona fide purchasers.

**(E) DIVIDENDS AND DIVISION OF PROFITS.**

- 1460. In general.
- 1461. Division of profits in general.
- 1462. What is a dividend.
- 1463. Declaration of dividends.
- 1464. — In general.

**V. CAPITAL AND STOCK.(Cont'd)**

- 1465. — Discretion of directors.
- 1466. — Validity.
  - (1). In general.
  - (2). Sufficiency of surplus or retained earnings.
  - (3). Solvency of corporation.
- 1467. — Constructive dividends.
- 1468. — Right of shareholders to compel declaration of dividends and actions therefor.
- 1469. Rights and liabilities as to dividends improperly paid.
- 1470. Rights and remedies of shareholders as to dividends.
- 1471. — In general.
- 1472. — Shareholders' right to payment of dividend.
- 1473. — Stock entitled to share in dividend.
  - (1). In general.
  - (2). Transferred stock; record date or ex dividend date.
- 1474. — Payment of dividends.
- 1475. — Preferred or other special stock.
  - (1). In general.
  - (2). Cumulative dividends.
- 1476. — Interest on shares or dividends.
- 1477. — Actions on dividends.
- 1478. Stock dividends.

**(F) LIEN OF CORPORATION.**

- 1480. In general.
- 1481. Nature and grounds in general.
- 1482. Creation.
- 1483. Restriction on right to transfer by one indebted to corporation.
- 1484. Stock or dividend subject to lien.
- 1485. Debts secured.
- 1486. Waiver.
- 1487. Priority.
- 1488. Discharge.
- 1489. Enforcement.

**VI. SHAREHOLDERS AND MEMBERS.****(A) IN GENERAL.**

- 1500. In general.
- 1501. Constitutional and statutory provisions.
- 1502. Who are shareholders or members.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****VI. SHAREHOLDERS AND MEMBERS.(Cont'd)**

- 1503. — In general.
- 1504. — Non-stock corporations.
- 1505. Evidence of shareholder status or membership.
- 1506. — In general.
- 1507. — Non-stock corporations.
- 1508. Withdrawal.
- 1509. — In general.
- 1510. — Non-stock corporations.
- 1511. Expulsion, suspension, or exclusion.
- 1512. — In general.
- 1513. — Non-stock corporations.

**(B) RIGHTS AND LIABILITIES AS TO CORPORATION AND OTHER SHAREHOLDERS OR MEMBERS.**

- 1520. In general.
- 1521. What law governs.
- 1522. Nature of relation.
- 1523. — In general.
- 1524. — Fiduciary duty in general.
- 1525. — Duty of corporation to shareholders.
- 1526. — Duty of shareholders or members to other shareholders or members.
  - (1). In general.
  - (2). Closely held corporations in general.
  - (3). Controlling or majority shareholders and minority shareholders in general.
  - (4). Duty to disclose information.
  - (5). Freeze out or oppression of minority shareholders.
  - (6). Rights and remedies of dissenting shareholders in general.
 

*Rights and remedies of minority shareholders in connection with mergers, acquisitions and reorganizations, see ¶2666, 2716, 2743, 2780, 2804.*
  - (7). Valuation of shares; appraisal and proceedings.
- 1527. Liability to assessment.
- 1528. Dues, fines, and fees.
- 1529. Services to corporation; shareholders as employees.
- 1530. — In general.
- 1531. — Compensation.
- 1532. — Termination.
- 1533. Rights as creditors of corporation.

**VI. SHAREHOLDERS AND MEMBERS.(Cont'd)**

- 1534. Management of corporate affairs in general.
- 1535. — In general.
- 1536. — Sole shareholder.
- 1537. — Shareholder agreements as to management.
- 1538. — Majority and minority shareholders; controlling interest.
- 1539. Inspection of corporate books and records.
- 1540. — In general.
- 1541. — Right to inspection.
  - (1). In general.
  - (2). Proper purposes.
  - (3). Reasonable time and place.
- 1542. — Books and records subject to inspection.
  - (1). In general.
  - (2). List of shareholders.
- 1543. — Persons entitled to inspection.
  - (1). In general.
  - (2). Amount or percentage of stock owned.
  - (3). Length of time as shareholder.
- 1544. — Request for inspection.
- 1545. — Refusal to allow inspection.
- 1546. — Exercise of right of inspection.
- 1547. — Furnishing shareholder statement of corporate affairs.
- 1548. — Actions to enforce right of inspection.
  - (1). In general.
  - (2). Jurisdiction and venue.
  - (3). Persons entitled to sue; standing.
  - (4). Time to sue; limitations and laches.
  - (5). Parties.
  - (6). Pleading.
  - (7). Evidence.
  - (8). Trial and judgment.
  - (9). Costs and attorney fees.
- 1549. Corporate property, funds, and securities.
- 1550. — In general.
- 1551. — Title and rights in general.
- 1552. — Equitable and beneficial interest.
- 1553. — Individual interest or conveyance.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****VI. SHAREHOLDERS AND MEMBERS.(Cont'd)**

- 1554. — Impairment of capital or division of assets.
- 1555. — Sole shareholder.
- 1556. — Majority and minority shareholders.
- 1557. — Sale or transfer of corporate property.
- 1558. Acquiring adverse title or interest.
- 1559. Individual profits or benefits from corporate business.
- 1560. Engaging in competing business.
- 1561. — In general.
- 1562. — Usurping corporate opportunity.
- 1563. Dealings with corporation.
- 1564. Dealings between shareholders or members of same corporation.
- 1565. — In general.
- 1566. — Purchase or sale of stock.
- 1567. Stock ownership or membership in different corporations.
- 1568. Actions between shareholders or members and corporation.  
*Derivative actions, see VIII.*
- 1569. — In general.
- 1570. — Right of shareholder or member to sue corporation; standing.
- 1571. — Grounds of action by shareholder or member against corporation.
  - (1). In general.
  - (2). Ultra vires transactions or wrongful use of power.
  - (3). Improper issue or division of stock.
- 1572. — Estoppel, waiver, limitations, and laches.
- 1573. — Demand before action.
- 1574. — Actions by corporation against shareholders or members.
- 1575. — Jurisdiction and venue.
- 1576. — Parties.
- 1577. — Pleading.
- 1578. — Evidence.
- 1579. — Trial and judgment.
- 1580. — Buy-out remedies.
- 1581. — Damages or amount of recovery.
- 1582. — Costs and attorney fees.
- 1583. Actions between shareholders or members of same corporation.
- 1584. — In general.

**VI. SHAREHOLDERS AND MEMBERS.(Cont'd)**

- 1585. — Jurisdiction and venue.
- 1586. — Right of shareholder or member to sue; standing.
- 1587. — Estoppel, waiver, limitations, and laches.
- 1588. — Parties.
- 1589. — Pleading.
- 1590. — Evidence.
- 1591. — Trial and judgment.
- 1592. — Buy-out remedies.
- 1593. — Damages or amount of recovery.
- 1594. — Costs and attorney fees.

**(C) MEETINGS.***Election of directors, see ¶1734.*

- 1600. In general.
- 1601. Statutory provisions.
- 1602. Necessity.
- 1603. — In general.
- 1604. — Actions taken by consent without meeting.
- 1605. Place for meeting.
- 1606. Time for meeting.
- 1607. Calling.
- 1608. Notice.
- 1609. — In general.
- 1610. — Necessity of and persons entitled to notice.
- 1611. — Time for notice.
- 1612. — Form and requisites.
- 1613. — Waiver.
- 1614. Quorum.
- 1615. Organization and conduct.
- 1616. Right to vote in general.
- 1617. — In general.
- 1618. — Transfer or pledge of shares.
- 1619. Proxies.  
*See also SECURITIES REGULATION 1(C)4.*
- 1620. — In general.
- 1621. — Right to vote by proxy.
- 1622. — Solicitation; proxy statements.
- 1623. — Form and requisites.
- 1624. — Authority of proxy and effect of representation.
- 1625. — Revocation.
  - (1). In general.
  - (2). Power coupled with interest.
- 1626. Voting trusts.
- 1627. — In general.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****VI. SHAREHOLDERS AND MEMBERS.(Cont'd)**

- 1628. — Validity.
- 1629. — Construction and operation in general.
- 1630. — Duration and termination.
- 1631. — Trustees.
- 1632. Agreements as to voting.
- 1633. Number of votes or shares required to prevail.
- 1634. Postponement or adjournment.
- 1635. Judicial regulation or review of proceedings.

**(D) LIABILITY FOR CORPORATE DEBTS AND ACTS.***Piercing corporate veil, see II.*

- 1640. In general.
- 1641. Constitutional and statutory provisions.
- 1642. What law governs.
- 1643. Nature and grounds in general.
- 1644. — In general.
- 1645. — Parent and subsidiary corporations.
- 1646. Contracts and securities for payment of corporate liabilities.
- 1647. — In general.
- 1648. — Promissory notes.
- 1649. — Shareholder guaranty.
  - (1). In general.
  - (2). Validity.
  - (3). Operation and effect.
- 1650. Nature or kind of corporation as affecting shareholder liability.
- 1651. Obligations incurred before incorporation.
- 1652. Defective incorporation or organization.
- 1653. Fraud as to creditors.
- 1654. Participation in unauthorized or wrongful acts of corporation.
- 1655. Failure to comply with statutory requirements.
- 1656. Extent of liability in general.
- 1657. Extent of liability on subscription to stock.
- 1658. — In general.
- 1659. — Unpaid subscriptions.
- 1660. — Release of subscriber by corporation.
- 1661. — Paid up stock in general.
- 1662. — Certificate of payment.

**VI. SHAREHOLDERS AND MEMBERS.(Cont'd)**

- 1663. — Stock issued for unauthorized or insufficient consideration.
  - (1). In general.
  - (2). Liability for purchasing at less than par value.
  - (3). Sufficiency of consideration and payment in property or services.
  - (4). Excessive valuation of property transferred in payment.
- 1664. — Increase of stock.
- 1665. — Reduction of stock.
- 1666. Extent of additional statutory liability.
- 1667. Amendment or repeal of statute imposing liability.
- 1668. Debts to which liability extends.
- 1669. — In general.
- 1670. — Wages.
- 1671. — Unliquidated damages and judgment for torts.
- 1672. Persons entitled to enforce liability.
- 1673. Persons liable.
- 1674. — In general.
- 1675. — Subscribers or their assignees.
- 1676. — Holders or owners of stock.
  - (1). In general.
  - (2). Who are shareholders in general.
  - (3). Persons holding stock as trustees or for special purposes.
  - (4). Holders of preferred stock.
  - (5). Holders of bonus stock or stock issued as gratuity.
  - (6). Holders of shares which have been forfeited.
  - (7). Equitable owners of stock.
  - (8). Persons holding stock as collateral.
  - (9). Estoppel to deny status as shareholder or validity of stock.
- 1677. — Effect of transfer of stock.
  - (1). In general.
  - (2). Liability of transferors in general.
  - (3). Liability of transferor for post-transfer debt.
  - (4). Effect and validity of surrender or sale of stock to corporation.
  - (5). Liability of transferees in general.
  - (6). Liability of transferee for pre-transfer debt.
  - (7). Liability of innocent purchasers.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****VI. SHAREHOLDERS AND MEMBERS.(Cont'd)**

- 1678. — Effect of death of shareholder.
- 1679. Joint or several liability.
- 1680. Waiver or release of liability.
- 1681. Payment or satisfaction of liability.
- 1682. Set off of claim by or against shareholder as to corporation.
- 1683. Necessity of exhausting remedy against corporation.
- 1684. Operation and effect as to shareholder of judgment against corporation.
- 1685. Insolvency or dissolution of corporation.
- 1686. — In general.
- 1687. — Trust fund doctrine.  
*See also* *§§* 2835, 2843, 2851.
- 1688. Garnishment or attachment of shareholder.
- 1689. Execution against shareholder on judgment against corporation.
- 1690. Actions to enforce liability.
- 1691. — In general.
- 1692. — Nature and form.
  - (1). In general.
  - (2). Action at law.
  - (3). Right to sue at law on subscription.
  - (4). Right to sue at law to enforce statutory liability.
  - (5). Assumpsit.
  - (6). Action of debt.
  - (7). Proceedings in equity.
  - (8). Creditors' bill or suit.
- 1693. — Grounds of action.
- 1694. — Conditions precedent.
- 1695. — Defenses.
  - (1). In general.
  - (2). Liability on subscription.
  - (3). Defects in incorporation or organization.
- 1696. — Jurisdiction and venue.
  - (1). In general.
  - (2). Proceedings in courts of other states.
- 1697. — Time to sue; limitations and laches.
- 1698. — Parties.
  - (1). In general.

**VI. SHAREHOLDERS AND MEMBERS.(Cont'd)**

- (2). Joinder of creditors as plaintiffs and right of single creditor to sue.
- (3). Action by creditor for benefit of other creditors.
- (4). Joinder of receiver or officers as plaintiffs in action by creditors.
- (5). Necessary parties defendant.
- (6). Joinder of shareholders as defendants and right to sue single shareholder.
- (7). Joinder of corporation or its assignee as defendant.
- (8). Parties defendant in action against estate of deceased shareholder.
- (9). Right of single creditor to sue single shareholder.
- 1699. — Process and appearance.
- 1700. — Receiver.
- 1701. — Pleading.
  - (1). In general.
  - (2). Bill, complaint, petition, or declaration.
  - (3). Plea or answer, cross-bill or cross-complaint, and subsequent pleadings.
  - (4). Amendment.
  - (5). Issues, proof, and variance.
- 1702. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Admissibility.
  - (4). Weight and sufficiency.
- 1703. — Trial.
- 1704. — Damages or amount of recovery.
- 1705. — Judgment or decree.
- 1706. — Execution and enforcement of judgment.
- 1707. — Costs and attorney fees.
- 1708. Priorities among creditors.
- 1709. Contribution among shareholders.
- 1710. Criminal liability of shareholders.

**VII. DIRECTORS, OFFICERS, AND AGENTS.****(A) IN GENERAL.**

- 1720. In general.
- 1721. Constitutional and statutory provisions.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****(B) ELECTION OR APPOINTMENT, QUALIFICATION,  
AND TENURE.****1. DIRECTORS.**

- 1730. In general.
- 1731. Power to elect in general.
- 1732. Eligibility or qualification.
- 1733. Number of directors.
- 1734. Election.
- 1735. — In general.
- 1736. — Requisites and validity in general.
- 1737. — Time and place of election.
- 1738. — Calling.
- 1739. — Notice.
  - (1). In general.
  - (2). Persons entitled to notice.
  - (3). Time for notice.
  - (4). Form and requisites.
  - (5). Waiver.
- 1740. — Quorum.
- 1741. — Right to vote in general.
  - (1). In general.
  - (2). Transfer or pledge of shares.
- 1742. — Conduct of election and count of votes.
  - (1). In general.
  - (2). Cumulative voting.
- 1743. — Proxies.  
*See also SECURITIES REGULATION I(C)4.*
  - (1). In general.
  - (2). Right to vote by proxy.
  - (3). Solicitation; proxy statements.
  - (4). Form and requisites.
  - (5). Authority of proxy and effect of representation.
  - (6). Revocation.
- 1744. — Voting trusts.
- 1745. — Agreements as to voting.
- 1746. — Actions and proceedings to compel meeting for election of directors.
- 1747. — Actions and proceedings to determine right to office.
  - (1). In general.
  - (2). Jurisdiction and venue.
  - (3). Right of action; standing.
  - (4). Evidence.
  - (5). Trial.
  - (6). Judgment, relief, and costs.
- 1748. — Appointment of provisional director.

**VII. DIRECTORS, OFFICERS,  
AND AGENTS.(Cont'd)**

- 1749. — Estoppel to question right to office.
- 1750. Acceptance, oath, and bond.
- 1751. De facto directors.
- 1752. Estoppel to deny directorship.
- 1753. Term of office and tenure.
- 1754. Resignation.
- 1755. Disqualification.
- 1756. Removal.
- 1757. Election of successor.

**2. OFFICERS AND AGENTS.**

- 1760. In general.
- 1761. Power to elect or appoint in general.
- 1762. Eligibility or qualification.
- 1763. Election or appointment of officers.
- 1764. Appointment of agents.
- 1765. Acceptance, oath, and bond.
- 1766. De facto officers and agents.
- 1767. Estoppel to deny appointment or agency.
- 1768. Term of office and tenure.
- 1769. Resignation.
- 1770. Disqualification.
- 1771. Removal.
- 1772. Election or appointment of successor.

**(C) AUTHORITY AND FUNCTIONS.**

- 1780. In general.
- 1781. Nature of corporate office in general.
- 1782. Authority of directors.
- 1783. Meetings of directors.
- 1784. — In general.
- 1785. — Necessity.
- 1786. — Actions taken by consent without meeting.
- 1787. — Legality or validity in general.
- 1788. — Place.
- 1789. — Time.
- 1790. — Calling.
- 1791. — Notice.
  - (1). In general.
  - (2). Necessity of and persons entitled to notice.
  - (3). Time for notice.
  - (4). Form and requisites.
  - (5). Waiver.



**101. CORPORATIONS AND BUSINESS ORGANIZATIONS**

- VII. DIRECTORS, OFFICERS, AND AGENTS.**(Cont'd)
1792. — Presumptions as to legality or validity of meeting.
1793. — Persons entitled to vote in general.
1794. — Quorum.
1795. — Voting and number required to act.
1796. — Directors with individual interest in transaction.
1797. — Proxies.
1798. — Necessity of recording acts of directors.
1799. Committees.
1800. Officers and agents.
1801. — In general.
1802. — President or chief executive officer.
1803. — Vice president.
1804. — Treasurer or chief financial officer.
1805. — Secretary.
1806. — Inferior ministerial officers.
1807. — Agents.
1808. Delegation of authority.

**(D) RIGHTS, DUTIES, AND LIABILITIES AS TO CORPORATION AND ITS SHAREHOLDERS OR MEMBERS.**

1810. In general.
1811. Fiduciary nature of relation.
1812. Compensation and benefits.
1813. — In general.
1814. — Right dependent on services within or outside ordinary duties.
1815. — Contracts or resolutions providing therefor in general.
1816. — Bylaws providing therefor in general.
1817. — Stock options.
- (1). In general.
- (2). Nature of option.
- (3). Validity.
- (4). Operation and effect; exercise.
1818. — Stock appreciation rights; phantom stock.
1819. — Severance plans and agreements.
- (1). In general.
- (2). Golden parachutes.

- VII. DIRECTORS, OFFICERS, AND AGENTS.**(Cont'd)
1820. — Directors or officers voting for or fixing own compensation.
1821. — Amount and duration.
1822. — Reduction or forfeiture; effect of absence or breach of duty.
1823. — Effect of insolvency or dissolution or discontinuance of business.
1824. — Payment and acceptance.
1825. — Actions for compensation.
- (1). In general.
- (2). Evidence.
- (3). Trial.
- (4). Damages or amount of recovery.
- (5). Costs and attorney fees.
1826. Indemnification.
1827. — In general.
1828. — Discretionary or mandatory.
1829. — Items and amounts recoverable.
1830. — Advancement of expenses.
1831. — Actions or proceedings to enforce or deny.
1832. Rights as creditors of corporation.
1833. — In general.
1834. — Loans and advances for benefit of corporation.
1835. — Purchase of claims against corporation.
1836. — Lien and priority in general.
1837. — Transfers, mortgages, and pledges as security.
1838. — Bondholders.
1839. — Compromise, settlement, and payment.
1840. Fiduciary duties as to management of corporate affairs in general.
1841. — In general.
1842. — Business judgment rule in general.
1843. — Duty of care in general.
1844. — Good faith.
1845. — Loyalty.
1846. — Oversight.
1847. — Duty to inquire; knowledge or notice.
1848. — Disclosure of information to corporation and shareholders or members.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS**

<b>VII. DIRECTORS, OFFICERS, AND AGENTS.(Cont'd)</b>	<b>VII. DIRECTORS, OFFICERS, AND AGENTS.(Cont'd)</b>
1849. — Reliance on attorneys, accountants, professionals, and experts as defense.	1883. Usurping corporate opportunities.
1850. — Degree of care required and negligence.	1884. Dealings with corporation or shareholders or members.
1851. — Misconduct.	1885. — In general.
1852. — Aiding and abetting.	1886. — Entire fairness of transaction in general.
1853. Liability for bad debts.	1887. — Contracts in general.
1854. Wrongful payment of dividends.	1888. — Purchase or sale of property to or from corporation or shareholders in general.
1855. Corporate books and records.	1889. — Purchase at judicial foreclosure and tax sales against corporation.
1856. — In general.	1890. — Loans from corporation.
1857. — Duty to keep and maintain.	1891. — Lease to or from corporation.
1858. — Right to inspect.	1892. — Purchase or sale of stock to or from director, officer, or agent.
1859. Corporate property, funds, and securities.	(1). In general.
1860. — In general.	(2). Stock options; backdating.
1861. — Liability for property and funds in general.	1893. — Disclosure and ratification.
1862. — Corporate waste.	1894. — Right to question or attack transaction; estoppel and acquiescence.
1863. — Misappropriation and conversion.	1895. Fraud as against corporation or shareholders or members.
1864. — Wrongful issue or indorsement of negotiable instruments.	1896. — In general.
1865. — Purchase and sale of property.	1897. — Contracts in general.
1866. — Right to question transactions; estoppel and acquiescence.	1898. — Fraudulent sale of property to corporation and overvaluation.
1867. Conflicts of interest and self-dealing in general.	1899. — Fraudulent breach of trust in general.
1868. — In general.	1900. — False representations inducing purchase, retention, or sale of stock.
1869. — Entire fairness in general.	1901. — Fraudulent issue of stock and purchase or sale of stock to or from directors or officers.
1870. — Disclosure and ratification.	(1). In general.
1871. — Right to question transaction; estoppel and acquiescence.	(2). Stock options; backdating.
1872. Acquiring adverse title or interest.	1902. — Right to question or attack transaction; estoppel or acquiescence.
1873. Individual profits or benefits from corporate business.	1903. Director, officer, or agent of different corporations.
1874. — In general.	1904. Exculpatory provisions in charter, articles of incorporation or bylaws.
1875. — Entire fairness in general.	1905. Exculpatory action by shareholders; set off.
1876. — Entrenchment.	1906. Actions by or against directors, officers, or agents in general.
1877. — Individual interest in and profits from contracts in general.	1907. — In general.
1878. — Profits or commissions on sales to corporation.	1908. — Jurisdiction and venue.
1879. — Conveyance of assets for personal gain.	
1880. — Disclosure and ratification.	
1881. — Right to question or attack transaction; estoppel and acquiescence.	
1882. Engaging in competing business.	

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS**

**VII. DIRECTORS, OFFICERS, AND AGENTS.**(Cont'd)

1909. — Pleading.  
 1910. — Evidence.  
 1911. — Trial and judgment.  
 1912. — Damages or amount of recovery.  
 1913. — Receiver.  
 1914. — Costs and attorney fees.  
 1915. Actions between corporation and its directors, officers, or agents.  
 1916. — In general.  
 1917. — Jurisdiction and venue.  
 1918. — Persons entitled to sue; standing.  
 1919. — Remedy at law or in equity.  
 1920. — Defenses.  
 1921. — Time to sue; limitations and laches.  
 1922. — Capacity to sue and parties.  
 1923. — Pleading.  
 1924. — Evidence.  
     (1). In general.  
     (2). Presumptions and burden of proof.  
     (3). Admissibility.  
     (4). Weight and sufficiency.  
 1925. — Trial and judgment.  
 1926. — Damages or amount of recovery.  
 1927. — Receiver.  
 1928. — Costs and attorney fees.  
 1929. Actions between shareholders or members and directors, officers, or agents.  
 1930. — In general.  
 1931. — Conditions precedent; pursuing other remedies.  
 1932. — Jurisdiction and venue.  
 1933. — Persons entitled to sue; standing.  
 1934. — Time to sue; limitations and laches.  
 1935. — Action by single or minority shareholder.  
 1936. — Parties.  
 1937. — Pleading.  
     (1). In general.  
     (2). Bill, petition, or complaint.  
     (3). Plea or answer.  
     (4). Issues, proof, and variance.  
 1938. — Evidence.  
     (1). In general.

**VII. DIRECTORS, OFFICERS, AND AGENTS.**(Cont'd)

(2). Presumptions and burden of proof.  
 (3). Admissibility.  
 (4). Weight and sufficiency.  
 1939. — Trial.  
 1940. — Damages or amount of recovery.  
     (1). In general.  
     (2). Disgorgement.  
 1941. — Receiver.  
 1942. — Judgment or decree.  
 1943. — Costs and attorney fees.  
 1944. Actions between and among directors, officers, or agents.  
 1945. Supervision of official acts by public authorities.  
 1946. Penalties for official misconduct.  
 1947. Criminal responsibility.

**(E) LIABILITY FOR CORPORATE DEBTS AND ACTS.**

1950. In general.  
 1951. Constitutional and statutory provisions.  
 1952. What law governs.  
 1953. — In general.  
 1954. — Fiduciary duties in relation to third parties in general.  
 1955. — Responsible corporate officers.  
 1956. Nature and grounds in general.  
 1957. — In general.  
 1958. — Acting in corporate capacity as opposed to acting in personal capacity.  
 1959. Contracts and guaranties.  
 1960. — In general.  
 1961. — Promissory notes.  
 1962. — Guaranty of corporate contracts, debts, and obligations.  
     (1). In general.  
     (2). Validity.  
     (3). Operation and effect.  
 1963. Nature or kind of corporation affecting liability.  
 1964. Obligations incurred before incorporation.  
 1965. Defective incorporation or organization.  
 1966. Mismanagement of corporate affairs.  
 1967. Illegal issue of stock and securities.  
 1968. Misappropriation of corporate assets.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****VII. DIRECTORS, OFFICERS,  
AND AGENTS.(Cont'd)**

- 1969. Wrongful payment of dividends.
- 1970. Participation in unauthorized or wrongful acts of corporation in general.
- 1971. Tortious acts in general.
- 1972. Fraud.
- 1973. Incurring debt exceeding capital.
- 1974. Liability for corporate reports.
- 1975. — In general.
- 1976. — Failure to make report in general.
- 1977. — Time to make report and for what time and debts liable.
- 1978. — Filing or publishing.
- 1979. — Defective reports.
- 1980. — False reports.
- 1981. Debts to which liability extends.
- 1982. — In general.
- 1983. — Time of incurring debt.
- 1984. Persons entitled to enforce liability.
- 1985. Persons liable.
- 1986. Joint and several liability.
- 1987. Waiver or release of liability; set off.
- 1988. Amendment or repeal of statute imposing liability.
- 1989. Necessity of judgment and execution against corporation.
- 1990. Effect as against director or officer of judgment against corporation.
- 1991. Insolvency, dissolution or forfeiture of charter of corporation.
- 1992. — In general.
- 1993. — Fiduciary duty to creditors in general.
- 1994. — Trust fund doctrine.
- 1995. — Deepening insolvency.
- 1996. Actions to enforce liability.
- 1997. — In general.
- 1998. — Nature and form.
- 1999. — Grounds of action.
- 2000. — Conditions precedent.
- 2001. — Defenses.
- 2002. — Jurisdiction and venue.
- 2003. — Persons entitled to sue; standing.
- 2004. — Time to sue; limitations and laches.
- 2005. — Parties.
- 2006. — Process and appearance.
- 2007. — Pleading.

**VII. DIRECTORS, OFFICERS,  
AND AGENTS.(Cont'd)**

- (1). In general.
- (2). Bill, declaration, petition, or complaint.
- (3). Answer or affidavit of defense.
- (4). Issues, proof, and variance.
- 2008. — Evidence.
- (1). In general.
- (2). Presumptions and burden of proof.
- (3). Admissibility.
- (4). Weight and sufficiency.
- 2009. — Trial.
- 2010. — Damages or amount of recovery.
- 2011. — Receiver.
- 2012. — Judgment or decree.
- 2013. — Execution and enforcement of judgment.
- 2014. — Costs and attorney fees.
- 2015. Contribution among directors, officers, and agents liable.
- 2016. Criminal responsibility of directors, officers, and agents for corporate acts.

**VIII. DERIVATIVE ACTIONS; SUING  
OR DEFENDING ON BEHALF  
OF CORPORATION.****(A) IN GENERAL.**

- 2020. In general.
- 2021. Statutory provisions.
- 2022. Nature and form of remedy.
- 2023. — In general.
- 2024. — Derivative action as distinct from direct or individual action in general.
- 2025. — Recovery to corporation rather than shareholder.
- 2026. — Closely held corporations.
- 2027. Persons entitled to sue or defend; standing.
- 2028. — In general.
- 2029. — Derivative or direct action.
- 2030. — Time of stock ownership in general.
- 2031. — Effect of merger, acquisition, reorganization, or dissolution.
- 2032. — Ability to represent other shareholders.
- 2033. Grounds of action or defense.
- 2034. Conditions precedent in general.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****VIII. DERIVATIVE ACTIONS; SUING OR  
DEFENDING ON BEHALF OF  
CORPORATION.(Cont'd)**

- 2035. Demanding action and refusal of corporation, directors or officers to act.
- 2036. — In general.
- 2037. — Necessity of demand.
- 2038. — Sufficiency of demand.
- 2039. — Sufficiency of refusal.
  - (1). In general.
  - (2). Good faith and reasonableness in general.
  - (3). Business judgment rule.
  - (4). Litigation committee investigation and recommendation.
- 2040. — Excuse for failure to demand; futility.
  - (1). In general.
  - (2). Interest of director or officer in lawsuit or lack of independence.
- 2041. — Refusal as condition precedent to right to sue or defend.
- 2042. Jurisdiction and venue.
- 2043. Time to sue; limitations and laches.
- 2044. Parties.
- 2045. Pleading.
- 2046. — In general.
- 2047. — Allegations as to corporate right of action.
- 2048. — Allegations as to interest of or injury to plaintiff.
- 2049. — Necessity of allegation of demand and refusal.
- 2050. — Sufficiency of allegations of demand and refusal.
- 2051. — Allegations of excuse for failure to demand; futility.
- 2052. — Sufficiency of bill, petition, or complaint.
- 2053. — Plea, answer, or demurrer.
- 2054. — Issues, proof, and variance.
- 2055. Evidence.
- 2056. — In general.
- 2057. — Presumptions and burden of proof.
- 2058. — Admissibility.
- 2059. — Weight and sufficiency.
- 2060. Trial and judgment.
- 2061. Damages or amount of recovery.
- 2062. Costs and attorney fees.

**VIII. DERIVATIVE ACTIONS; SUING OR  
DEFENDING ON BEHALF OF  
CORPORATION.(Cont'd)**

- 2063. — In general.
- 2064. — Corporate benefit.
- 2065. — Bond or security.
- (B) DERIVATIVE ACTIONS BY SHAREHOLDERS  
AGAINST DIRECTORS, OFFICERS, OR  
AGENTS.**
- 2070. In general.
- 2071. Statutory provisions.
- 2072. Nature and form of remedy.
- 2073. — In general.
- 2074. — Derivative action as distinct from direct or individual action in general.
- 2075. — Recovery to corporation rather than shareholder.
- 2076. — Closely held corporations.
- 2077. Persons entitled to sue or defend; standing.
- 2078. — In general.
- 2079. — Derivative or direct action.
- 2080. — Time of stock ownership in general.
- 2081. — Effect of merger, acquisition, reorganization, or dissolution.
- 2082. — Ability to represent other shareholders.
- 2083. Grounds of actions or defense.
- 2084. Conditions precedent in general.
- 2085. Demanding action and refusal of corporation, directors, or officers to act.
- 2086. — In general.
- 2087. — Necessity of demand.
- 2088. — Sufficiency of demand.
- 2089. — Sufficiency of refusal.
  - (1). In general.
  - (2). Good faith and reasonableness in general.
  - (3). Business judgment rule.
  - (4). Litigation committee investigation and recommendation.
- 2090. — Excuse for failure to demand; futility.
  - (1). In general.
  - (2). Interest of director or officer in lawsuit or lack of independence.
- 2091. — Refusal as condition precedent to right to sue or defend.
- 2092. Jurisdiction and venue.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****VIII. DERIVATIVE ACTIONS; SUING OR  
DEFENDING ON BEHALF OF  
CORPORATION.(Cont'd)**

- 2093. Time to sue; limitations and laches.
- 2094. Parties.
- 2095. Pleading.
- 2096. — In general.
- 2097. — Allegations as to corporate right of action.
- 2098. — Allegations as to interest of or injury to plaintiff.
- 2099. — Necessity of allegation of demand and refusal.
- 2100. — Sufficiency of allegations of demand and refusal.
- 2101. — Allegations of excuse for failure to demand; futility.
- 2102. — Sufficiency of bill, petition, or complaint.
- 2103. — Plea, answer, or demurrer.
- 2104. — Issues, proof, and variance.
- 2105. Evidence.
- 2106. — In general.
- 2107. — Presumptions and burden of proof.
- 2108. — Admissibility.
- 2109. — Weight and sufficiency.
- 2110. Trial and judgment.
- 2111. Damages or amount of recovery.
- 2112. Costs and attorney fees.
- 2113. — In general.
- 2114. — Corporate benefit.
- 2115. — Bond or security.

**(C) DERIVATIVE ACTIONS BY SHAREHOLDERS  
AGAINST THIRD PARTIES.**

- 2120. In general.
- 2121. Statutory provisions.
- 2122. Nature and form of remedy.
- 2123. — In general.
- 2124. — Derivative action as distinct from direct or individual action in general.
- 2125. — Recovery to corporation rather than shareholder.
- 2126. — Closely held corporations.
- 2127. Persons entitled to sue or defend; standing.
- 2128. — In general.
- 2129. — Derivative or direct action.

**VIII. DERIVATIVE ACTIONS; SUING OR  
DEFENDING ON BEHALF OF  
CORPORATION.(Cont'd)**

- 2130. — Time of stock ownership in general.
- 2131. — Effect of merger, acquisition, reorganization, or dissolution.
- 2132. — Ability to represent other shareholders.
- 2133. Grounds of actions or defense.
- 2134. Conditions precedent in general.
- 2135. Demanding action and refusal of corporation, directors, or officers to act.
- 2136. — In general.
- 2137. — Necessity of demand.
- 2138. — Sufficiency of demand.
- 2139. — Sufficiency of refusal.
  - (1). In general.
  - (2). Good faith and reasonableness in general.
  - (3). Business judgment rule.
  - (4). Litigation committee investigation and recommendation.
- 2140. — Excuse for failure to demand; futility.
  - (1). In general.
  - (2). Interest of director or officer in lawsuit or lack of independence.
- 2141. — Refusal as condition precedent to right to sue or defend.
- 2142. Jurisdiction and venue.
- 2143. Time to sue; limitations and laches.
- 2144. Parties.
- 2145. Pleading.
- 2146. — In general.
- 2147. — Allegations as to corporate right of action.
- 2148. — Allegations as to interest of or injury to plaintiff.
- 2149. — Necessity of allegation of demand and refusal.
- 2150. — Sufficiency of allegations of demand and refusal.
- 2151. — Allegations of excuse for failure to demand; futility.
- 2152. — Sufficiency of bill, petition, or complaint.
- 2153. — Plea, answer, or demurrer.
- 2154. — Issues, proof, and variance.
- 2155. Evidence.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****VIII. DERIVATIVE ACTIONS; SUING OR  
DEFENDING ON BEHALF OF  
CORPORATION.(Cont'd)**

- 2156. — In general.
- 2157. — Presumptions and burden of proof.
- 2158. — Admissibility.
- 2159. — Weight and sufficiency.
- 2160. Trial and judgment.
- 2161. Damages or amount of recovery.
- 2162. Costs and attorney fees.
- 2163. — In general.
- 2164. — Corporate benefit.
- 2165. — Bond or security.

**(D) DERIVATIVE ACTIONS BY SHAREHOLDERS  
AGAINST OTHER SHAREHOLDERS.**

- 2170. In general.
- 2171. Statutory provisions.
- 2172. Nature and form of remedy.
- 2173. — In general.
- 2174. — Derivative action as distinct from direct or individual action in general.
- 2175. — Recovery to corporation rather than shareholder.
- 2176. — Closely held corporations.
- 2177. Persons entitled to sue or defend; standing.
- 2178. — In general.
- 2179. — Derivative or direct action.
- 2180. — Time of stock ownership in general.
- 2181. — Effect of merger, acquisition, reorganization, or dissolution.
- 2182. — Ability to represent other shareholders.
- 2183. Grounds of actions or defense.
- 2184. Conditions precedent in general.
- 2185. Demanding action and refusal of corporation, directors, or officers to act.
- 2186. — In general.
- 2187. — Necessity of demand.
- 2188. — Sufficiency of demand.
- 2189. — Sufficiency of refusal.
  - (1). In general.
  - (2). Good faith and reasonableness in general.
  - (3). Business judgment rule.
  - (4). Litigation committee investigation and recommendation.

**VIII. DERIVATIVE ACTIONS; SUING OR  
DEFENDING ON BEHALF OF  
CORPORATION.(Cont'd)**

- 2190. — Excuse for failure to demand; futility.
  - (1). In general.
  - (2). Interest of director or officer in lawsuit or lack of independence.
- 2191. — Refusal as condition precedent to right to sue or defend.
- 2192. Jurisdiction and venue.
- 2193. Time to sue; limitations and laches.
- 2194. Parties.
- 2195. Pleading.
- 2196. — In general.
- 2197. — Allegations as to corporate right of action.
- 2198. — Allegations as to interest of or injury to plaintiff.
- 2199. — Necessity of allegation of demand and refusal.
- 2200. — Sufficiency of allegations of demand and refusal.
- 2201. — Allegations of excuse for failure to demand; futility.
- 2202. — Sufficiency of bill, petition, or complaint.
- 2203. — Plea, answer, or demurrer.
- 2204. — Issues, proof, and variance.
- 2205. Evidence.
- 2206. — In general.
- 2207. — Presumptions and burden of proof.
- 2208. — Admissibility.
- 2209. — Weight and sufficiency.
- 2210. Trial and judgment.
- 2211. Damages or amount of recovery.
- 2212. Costs and attorney fees.

**(E) DERIVATIVE ACTIONS BY PERSONS  
OTHER THAN SHAREHOLDERS.**

- 2220. In general.
- 2221. By directors, officers and agents.
- 2222. — In general.
- 2223. — Right to sue or defend; standing.
- 2224. — Demanding action and refusal of corporation, directors, or officers to act.
- 2225. — Jurisdiction and venue.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****VIII. DERIVATIVE ACTIONS; SUING OR  
DEFENDING ON BEHALF OF  
CORPORATION.(Cont'd)**

- 2226. — Time to sue; limitations and laches.
- 2227. — Parties.
- 2228. — Pleading.
- 2229. — Evidence.
- 2230. — Trial and judgment.
- 2231. — Damages or amount of recovery.
- 2232. — Costs and attorney fees.
- 2233. By creditors.
- 2234. — In general.
- 2235. — Right to sue or defend; standing.
- 2236. — Demanding action and refusal of corporation, directors, or officers to act.
- 2237. — Jurisdiction and venue.
- 2238. — Time to sue; limitations and laches.
- 2239. — Parties.
- 2240. — Pleading.
- 2241. — Evidence.
- 2242. — Trial and judgment.
- 2243. — Damages or amount of recovery.
- 2244. — Costs and attorney fees.

**IX. CORPORATE POWERS AND LIABILITIES.****(A) EXTENT AND EXERCISE OF  
POWERS IN GENERAL.**

- 2250. In general.
- 2251. Constitutional and statutory provisions.
- 2252. Scope of corporate power in general.
- 2253. — In general.
- 2254. — Ultra vires acts in general.
- 2255. — Notice of limitations.
- 2256. — Express or implied grant of power in general.
- 2257. Powers essential to corporate existence.
- 2258. Construction of charters and articles of incorporation.
- 2259. Powers incident to execution of those granted.
- 2260. Limitation of powers by purposes of incorporation.
- 2261. Transfer of charter or franchise.
- 2262. Purchasing and holding corporation's own stock.
- 2263. Purchasing and holding stock in other corporations.

**IX. CORPORATE POWERS AND  
LIABILITIES.(Cont'd)**

- 2264. — In general.
- 2265. — Subscription to stock.
- 2266. — Purchase of stock.
- 2267. Professional corporations.  
*Practice of law by corporations, see ATTORNEYS AND LEGAL SERVICES ¶82. Law firms, see ATTORNEYS AND LEGAL SERVICES IV. Legal Services Corporation, see ATTORNEYS AND LEGAL SERVICES ¶1282.*
- 2268. Combinations, pools, and associations.
- 2269. Partnerships and joint ventures.
- 2270. Agencies.
- 2271. Trusts.
- 2272. Mode of action in general.
- 2273. Necessity for use of seal.
- 2274. Effect of ultra vires acts.
- 2275. Ratification of unauthorized acts.
- 2276. Persons entitled to question corporate powers.
- 2277. — In general.
- 2278. — Persons interested in or damaged by act complained of.
- 2279. — Private citizens or state.
- 2280. — Corporation or shareholders or members.
- 2281. — Creditors or debtors.
- 2282. Estoppel to deny corporate powers.
- 2283. — In general.
- 2284. — Estoppel of corporation.
  - (1). In general.
  - (2). By receiving or retaining benefits.
  - (3). By knowledge or acquiescence.
- 2285. — Estoppel of shareholders or members.
- 2286. — Estoppel of directors, officers, or agents.
- 2287. — Estoppel of third parties.
- 2288. Regulation and supervision.
- 2289. — In general.
- 2290. — Legislative regulation.
- 2291. — Judicial supervision.
- 2292. — Visitation and supervision by public officials in general.
- 2293. — Access of public to corporate books and records.
- 2294. — Penalties for wrongful acts or omissions.



**101. CORPORATIONS AND BUSINESS ORGANIZATIONS**

**(B) REPRESENTATION OF CORPORATION BY CORPORATE PRINCIPALS.**

2300. In general.

2301. Application of principle of agency to corporations.

2302. — In general.

2303. — Corporation acts through officers or agents.

2304. — Acting within scope of employment or authority.

2305. Who may represent corporation.

2306. — In general.

2307. — Vice principals in general.

2308. — Directors, officers, or agents in general.

2309. — Directors, officers, or agents acting as individuals or shareholders.

2310. — Persons holding entire or controlling stock.

2311. Actual or express authority in general.

2312. Apparent or implied authority.

2313. — In general.

2314. — To manage or conduct corporate business in general.

2315. — To contract.

2316. — To make or deal with negotiable instruments.

2317. — To do acts respecting loans, mortgages, indebtedness, or finances.

2318. — To make purchases or sales.

2319. — To make other particular transactions.

2320. Restriction of authority.

2321. Representation of different corporations or of corporation and individual by same person.

2322. Use of corporate or individual name.

2323. Use of corporate seal.

2324. Control and conduct of corporate business in general.

2325. Disposition of corporate property in general.

2326. — In general.

2327. — Directors.

2328. — President, chief executive officer, or vice president.

2329. — Secretary, treasurer, or chief financial officer.

2330. Contracts in general.

2331. — In general.

**IX. CORPORATE POWERS AND LIABILITIES.(Cont'd)**

2332. — Directors.

2333. — President, chief executive officer, or vice president.

2334. — Secretary, treasurer, or chief financial officer.

2335. — General or managing agent.

2336. Contracts of employment.

2337. — In general.

2338. — Directors.

2339. — President, chief executive officer, or vice president.

2340. — Secretary, treasurer, or chief financial officer.

2341. — General or managing agent.

2342. Transactions concerning corporate stock.

2343. Leases.

2344. Purchases, sales, and warranties.

2345. Collections and payments.

2346. Pledging credit of corporation.

2347. Borrowing and loaning money.

2348. Negotiable instruments in general.

2349. — In general.

2350. — Directors.

2351. — President, chief executive officer, or vice president.

2352. — Secretary, treasurer, or chief financial officer.

2353. — General or managing agent.

2354. — Accommodation paper.

2355. Bonds, mortgages, and security agreements.

2356. Indemnity, guaranty, and suretyship.

2357. Compromises and releases.

2358. Submission to arbitration.

2359. Conduct of litigation.

2360. Confession of judgment.

2361. Assignment for benefit of creditors.

2362. Representations or admissions.

2363. — In general.

2364. — Directors.

2365. — President, chief executive officer, or vice president.

2366. — Secretary, treasurer, or chief financial officer.

2367. — General or managing agent.

2368. Wrongful acts or omissions.

2369. — In general.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****IX. CORPORATE POWERS AND  
LIABILITIES.(Cont'd)**

- 2370. — Imputed liability in general.
- 2371. — Respondeat superior in general.
- 2372. — Fraud.
- 2373. — Defamation.
- 2374. — Adverse interest.
  - (1). In general.
  - (2). Sole actor.
- 2375. Persons entitled to question authority.
- 2376. Estoppel to deny authority or acts in general.
- 2377. — In general.
- 2378. — Estoppel of persons dealing with corporate principals.
- 2379. — Estoppel of corporate principals.
- 2380. — Knowledge or notice.
- 2381. — Estoppel to deny authority held out or apparently within scope of agency.
- 2382. — Estoppel of corporation by acts or declarations.
- 2383. — Ultra vires or unlawful acts.
- 2384. Ratification and repudiation.
- 2385. — In general.
- 2386. — Authority to ratify or repudiate.
- 2387. — Rescission or repudiation.
- 2388. — By assent of shareholders or directors.
- 2389. — Necessity of formal act.
- 2390. — Vote or formal action by shareholders or directors.
- 2391. — By acquiescence, recognition, or adoption of transaction.
- 2392. — By laches.
- 2393. — By accepting or retaining benefits.
- 2394. — Knowledge or notice of facts to support a ratification.
- 2395. Rights acquired by corporation.
- 2396. Knowledge of or notice to corporate principal as affecting corporation.
- 2397. — In general.
- 2398. — Collective knowledge in general.
- 2399. — Tortious acts.
- 2400. — Matters within scope of agency or employment.
- 2401. — Knowledge of or notice to particular corporate principals.
  - (1). In general.

**IX. CORPORATE POWERS AND  
LIABILITIES.(Cont'd)**

- (2). Shareholders, members, or incorporators in general.
- (3). Controlling shareholders.
- (4). Directors.
- (5). Officers in general.
- (6). President, chief executive officer, or administrative officer.
- (7). Subordinate agents or mere employees.
- 2402. — Knowledge of or notice to principal not acquired in representative capacity.
- 2403. — Knowledge derived from principal's individual interest or business.
- 2404. — Adverse interest.
  - (1). In general.
  - (2). Sole actor.
- 2405. — Knowledge or notice of principal's own fraud.
- 2406. Knowledge or notice to person dealing with corporation of authority of principal.
- 2407. Individual interest of principal as affecting person dealing with corporation.
- 2408. Undisclosed agency for corporation.
- 2409. — In general.
- 2410. — Duty to disclose.
- 2411. — Personal liability of undisclosed agent.

**(C) PROPERTY AND CONVEYANCES.**

- 2420. In general.
- 2421. Capacity to acquire and hold property in general.
- 2422. Restrictions as to real property.
- 2423. — In general.
- 2424. — Farming and ranching.
- 2425. — Limitations as to time or value.
- 2426. Mode of acquiring property.
- 2427. Conveyances to or for corporation.
- 2428. Title or interest acquired by corporation.
- 2429. Power of corporation to convey in general.
- 2430. Power to mortgage or pledge.
- 2431. Conveyances by corporation.
- 2432. — In general.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****IX. CORPORATE POWERS AND  
LIABILITIES.(Cont'd)**

- 2433. — Authority to make.
- 2434. — Form and requisites.
- 2435. — Execution.
- 2436. — Construction and operation.
- 2437. Effect of conveyances and transactions ultra vires.

**(D) CONTRACTS AND INDEBTEDNESS.**

- 2440. In general.
- 2441. Capacity to contract in general.
- 2442. Restrictions of power to contract.
- 2443. Limitation on amount of indebtedness.
- 2444. Implied contracts.
- 2445. Formal requisites in general.
- 2446. Use of corporate name.
- 2447. Necessity of writing.
- 2448. Contracts under seal.
- 2449. Contracts of employment.
- 2450. Purchases by corporation.
- 2451. Sales by corporation.
- 2452. Leases.
- 2453. Borrowing money.
- 2454. Loaning money.
- 2455. Taking notes, bonds, mortgages, or other securities.
- 2456. Making and indorsement of negotiable instruments.
- 2457. — In general.
- 2458. — Authority to make or indorse.
- 2459. — Form, requisites, and validity.
- 2460. — Indorsement and transfer.
- 2461. — Accommodation paper.
- 2462. Making and issuance of bonds, debentures, certificates, and indentures.
- 2463. — In general.
- 2464. — Authority to issue.
- 2465. — Nature of obligation.
- 2466. — Form, requisites, and validity.
- 2467. — Construction, operation, and effect in general.
- 2468. — Indenture trustee.
- 2469. — Negotiation and sale.
- 2470. — Rights and remedies of holders.
  - (1). In general.
  - (2). Convertibility.
  - (3). Actions.
- 2471. — Pledges.

**IX. CORPORATE POWERS AND  
LIABILITIES.(Cont'd)**

- 2472. Mortgages and trust deeds by corporation.
- 2473. — In general.
- 2474. — Nature and essentials as security.
  - (1). In general.
  - (2). What constitutes mortgage.
  - (3). Consideration.
- 2475. — Form, requisites, and validity.
  - (1). In general.
  - (2). Order or resolution authorizing.
  - (3). By whom executed.
  - (4). Seal.
  - (5). Affidavit of good faith.
  - (6). Consent or ratification of shareholders.
  - (7). Delivery.
  - (8). Right to question or attack.
- 2476. — Construction and operation in general.
- 2477. — Rights, duties, and liabilities of mortgagees and trustees.
- 2478. — Lien and priority.
- 2479. — Assignment, payment, discharge, release, and satisfaction.
- 2480. — Foreclosure by exercise of power of sale.
- 2481. — Foreclosure by action.
  - (1). In general.
  - (2). Nature and form of remedy.
  - (3). Right of action and defenses.
  - (4). Persons entitled to sue; standing.
  - (5). Parties.
  - (6). Pleading.
  - (7). Evidence.
  - (8). Trial.
  - (9). Judgment or decree.
  - (10). Sale or disposition of proceeds.
  - (11). Costs and attorney fees.
- 2482. — Redemption.
- 2483. Liens for debts of corporation.
- 2484. Indemnity, guaranty, and suretyship.
- 2485. — In general.
- 2486. — Pledging credit.
- 2487. — Indemnity.
- 2488. — Guaranty.
- 2489. — Suretyship.
- 2490. Assumption of pre-existing debts.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****IX. CORPORATE POWERS AND  
LIABILITIES.(Cont'd)**

- 2491. Sinking funds.
- 2492. Rights and liabilities on contracts and securities ultra vires.
- 2493. — In general.
- 2494. — Notes.
- 2495. — Mortgages.
- 2496. — Bonds.

**(E) TORTS.**

- 2500. In general.
- 2501. Nature and ground of corporate liability.
- 2502. Exercise of power conferred by charter.
- 2503. Ultra vires acts.
- 2504. Willful or malicious act.
- 2505. Negligence.
- 2506. Fraud.
- 2507. Exemplary damages.

**(F) CIVIL ACTIONS.**

- 2520. In general.
- 2521. Capacity of corporation to sue and be sued in general.
- 2522. — In general.
- 2523. — Depending upon compliance with statutory requirements.
- 2524. Constitutional and statutory provisions.
- 2525. Nature and form.
- 2526. Jurisdiction.
- 2527. Venue.
- 2528. — In general.
- 2529. — Place of accrual of right of action.
- 2530. — Change of venue.
- 2531. — Waiver of objections.
- 2532. Time to sue; limitations and laches.
- 2533. Use of corporate name.
- 2534. — In general.
- 2535. — Misnomer.
- 2536. — Trade name.  
*Use as trademark, see TRADEMARKS.*
- 2537. Persons entitled to sue; standing.
- 2538. Parties.
- 2539. Process and notice.
- 2540. — In general.
- 2541. — Necessity, form, and requisites.
  - (1). In general.
  - (2). Name on form.

**IX. CORPORATE POWERS AND  
LIABILITIES.(Cont'd)**

- (3). Issuance for service in another county.
- 2542. — Place and time for service.
- 2543. — Mode of service in general.
- 2544. — What officer or agent should or may be served.
  - (1). In general.
  - (2). Authority or capacity of person served in general.
  - (3). “Managing agent”.
  - (4). Subordinate officer or agent.
  - (5). Service after expiration of term, resignation, or failure to elect officers.
  - (6). Officer or agent adversely interested.
  - (7). Parent or subsidiary.
- 2545. — Necessity and sufficiency of service in general.
- 2546. — Substituted or constructive service.
  - (1). In general.
  - (2). Service by publication.
  - (3). Service by mail.
  - (4). Service on secretary of state or other public official.
- 2547. — Requisites and sufficiency of return of service.
- 2548. — Objections to service and waiver thereof.
- 2549. — Motions to set aside service.
- 2550. Appearance.  
*Representation by attorney, see ATTORNEYS AND LEGAL SERVICES ¶86.*
- 2551. Attachment.
- 2552. — In general.
- 2553. — Grounds for attachment.
- 2554. — Proceedings to procure attachment.
- 2555. — Vacation of attachment.
- 2556. Garnishment.
- 2557. — In general.
- 2558. — Service.
- 2559. — Answer.
- 2560. Receiver.
- 2561. Pleading.
- 2562. — In general.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS**

**IX. CORPORATE POWERS AND LIABILITIES.**(Cont'd)

2563. — Requisites and sufficiency in general.

2564. — Allegations and denial of corporate existence.

(1). In general.

(2). In action by corporation.

(3). In action against corporation.

(4). Allegations as to termination and forfeiture.

2565. — Execution of contracts and breach thereof.

2566. — Wrongful acts in general.

2567. — Authority of officers and agents.

2568. — Admissions.

2569. — Defense of ultra vires.

2570. — Amended and supplemental pleadings.

2571. — Signature, verification, and accompanying affidavits.

2572. — Issues, proof, and variance.

(1). In general.

(2). Corporate existence.

2573. Evidence in general.

2574. — In general.

2575. — Presumptions and burden of proof.

2576. — Admissibility.

2577. — Weight and sufficiency.

2578. Evidence as to corporate powers.

2579. — In general.

2580. — Presumptions and burden of proof.

2581. — Admissibility.

2582. — Weight and sufficiency.

2583. Evidence as to authority of corporate principals.

2584. — In general.

2585. — Presumptions.

(1). In general.

(2). From customary duties or acts or nature of office.

(3). From regularity or manner of execution of corporate instrument.

(4). From use of seal.

2586. — Burden of proof.

2587. — Admissibility.

(1). In general.

**IX. CORPORATE POWERS AND LIABILITIES.**(Cont'd)

(2). Acts or declarations of corporation.

(3). Acts or declarations of or instruments executed by principal.

(4). Bylaw provisions or resolutions.

(5). Custom or usage as to authority of particular principals.

(6). Ratification.

2588. — Weight and sufficiency.

(1). In general.

(2). Acts or declarations of corporation.

(3). Acts or declarations of principals.

(4). Contracts or instruments executed by principals.

(5). Bylaw provisions or resolutions.

(6). Custom or usage as to authority of particular principal.

(7). Ratification.

2589. Dismissal and nonsuit.

2590. Trial.

2591. Questions of law or fact.

2592. — In general.

2593. — As to corporate powers.

2594. — As to authority of corporate principals.

(1). In general.

(2). Ratification.

2595. Damages or amount of recovery.

2596. Judgment or decree.

2597. Execution and enforcement of judgment.

2598. Costs and attorney fees.

**(G) CRIMES AND PROSECUTIONS.**

2610. In general.

2611. Nature and grounds of corporate responsibility.

2612. — In general.

2613. — Acts or omissions of officers and agents.

2614. Felonies and misdemeanors.

2615. Acts or omissions constituting offenses.

2616. Prosecutions.

2617. — In general.

2618. — Jurisdiction.

2619. — Process and appearance.

2620. — Preliminary examination.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****IX. CORPORATE POWERS AND  
LIABILITIES.(Cont'd)**

- 2621. — Indictment or information.
- 2622. — Evidence.
- 2623. — Trial.
- 2624. — Sentencing and punishment.

**X. MERGERS, ACQUISITIONS,  
AND REORGANIZATIONS.****(A) IN GENERAL.**

- 2630. In general.
- 2631. Authority to effectuate transaction.
- 2632. Duties of directors and officers in general; business judgment rule.
- 2633. Agreements for transaction.
- 2634. Execution.
- 2635. Assent of shareholders.
- 2636. Rights and remedies of, and actions by, dissenting shareholders.
- 2637. Construction and operation in general.
- 2638. Assumption of or succession to transferor's liabilities.
- 2639. — In general.
- 2640. — Exceptions to successor non-liability.
  - (1). In general.
  - (2). De facto merger.
  - (3). Mere continuation.
  - (4). Continuity of enterprise.
  - (5). Product line exception.
- 2641. — Particular debts and liabilities.
  - (1). In general.
  - (2). Contracts.
  - (3). Torts.
  - (4). Liabilities based on statutory provisions.

**(B) MERGERS AND CONSOLIDATIONS.**

- 2650. In general.
- 2651. Power to merge or consolidate.
- 2652. Distinction between merger and consolidation.
- 2653. Short form merger.
- 2654. Duties of directors and officers in general; business judgment rule.
- 2655. Agreements for merger or consolidation.
- 2656. — In general.
- 2657. — Requisites and validity.

**X. MERGERS, ACQUISITIONS, AND  
REORGANIZATIONS.(Cont'd)**

- 2658. — Performance or breach.
- 2659. — Construction, operation, and effect.
- 2660. — Warranties and representations.
- 2661. Assent of shareholders.
- 2662. — In general.
- 2663. — Disclosure of information in general.
- 2664. — Fraud in obtaining consent.
- 2665. — Meeting and voting.
- 2666. Rights and remedies of, and actions by, dissenting shareholders.
- 2667. — In general.
- 2668. — Fairness of transaction.
- 2669. — Good faith and fiduciary duties.
- 2670. — Payment of value of stock.
- 2671. — Proceedings for appraisal.
  - (1). In general.
  - (2). Exclusive remedy.
  - (3). Right to appraisal and conditions precedent; notice.
  - (4). Decision and award.
  - (5). Costs and attorney fees.
- 2672. Proceedings for merger or consolidation.
- 2673. Operation and effect of merger or consolidation.
- 2674. — In general.
- 2675. — Status of original and surviving corporations.
- 2676. — Right to stock in surviving corporation.
- 2677. — Franchises and powers of surviving corporation.
- 2678. — Succession to rights of original corporations.
- 2679. — Liability of surviving corporation for debts or acts of original corporations.
  - (1). In general.
  - (2). Debts in general.
  - (3). Contracts.
  - (4). Torts.
  - (5). Bonds, mortgages, and liens.
  - (6). Liabilities based on statutory provisions.
  - (7). Crimes.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****X. MERGERS, ACQUISITIONS, AND REORGANIZATIONS.(Cont'd)**

- 2680. Actions by or against surviving corporation.
- 2681. — In general.
- 2682. — Jurisdiction and venue.
- 2683. — Persons entitled to sue; standing.
- 2684. — Time to sue; limitations and laches.
- 2685. — Pleading.
- 2686. — Evidence.
- 2687. — Trial and judgment.
- 2688. — Damages or amount of recovery.
- 2689. — Costs and attorney fees.

**(C) SALE, LEASE, OR EXCHANGE OF SUBSTANTIALLY ALL CORPORATE ASSETS.**

- 2700. In general.
- 2701. Authority to effectuate transaction.
- 2702. Duties of directors and officers in general; business judgment rule.
- 2703. Form and requisites in general.
- 2704. Letter of intent.
- 2705. Agreements to sell, lease, or exchange.
- 2706. — In general.
- 2707. — Requisites and validity.
- 2708. — Performance or breach.
- 2709. — Construction, operation, and effect.
- 2710. — Warranties and representations.
- 2711. Assent of shareholders.
- 2712. — In general.
- 2713. — Disclosure of information in general.
- 2714. — Fraud in obtaining consent.
- 2715. — Meeting and voting.
- 2716. Rights and remedies of, and actions by, dissenting shareholders.
- 2717. — In general.
- 2718. — Payment of value of stock.
- 2719. — Proceedings for appraisal.
- 2720. Execution.
- 2721. Assumption of or succession to transferor's debts and liabilities.
- 2722. — In general.
- 2723. — Exceptions to successor non-liability.
  - (1). In general.
  - (2). De facto merger.

**X. MERGERS, ACQUISITIONS, AND REORGANIZATIONS.(Cont'd)**

- (3). Mere continuation.
- (4). Continuity of enterprise.
- (5). Product line exception.
- 2724. — Particular debts and liabilities.
  - (1). In general.
  - (2). Contracts.
  - (3). Torts.
  - (4). Liabilities based on statutory provisions.
- 2725. Actions.
- 2726. — In general.
- 2727. — Jurisdiction and venue.
- 2728. — Persons entitled to sue; standing.
- 2729. — Time to sue; limitations and laches.
- 2730. — Parties.
- 2731. — Pleading.
- 2732. — Evidence.
- 2733. — Trial and judgment.
- 2734. — Damages or amount of recovery.
- 2735. — Costs and attorney fees.

**(D) SALE OR TRANSFER OF ALL OR CONTROLLING INTEREST OF STOCK.**

- 2740. In general.
- 2741. Authority or right to sell or transfer stock.
- 2742. — In general.
- 2743. — Duties to, rights and remedies of, and actions by, dissenting shareholders.
- 2744. What law governs.
- 2745. Letter of intent.
- 2746. Tender offer.
- 2747. Agreements to purchase or sell stock.
- 2748. — In general.
- 2749. — Requisites and validity in general.
- 2750. — Fraud and misrepresentation.
- 2751. — Performance or breach.
- 2752. — Construction, operation, and effect in general.
- 2753. — Warranties and agreements to repurchase.
- 2754. Assignment and transfer of shares.
- 2755. Transfer of shares as affecting property, rights and liabilities of corporation.
- 2756. Actions.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****X. MERGERS, ACQUISITIONS, AND REORGANIZATIONS.(Cont'd)**

- 2757. — In general.
- 2758. — Conditions precedent to action or defense.
- 2759. — Jurisdiction and venue.
- 2760. — Persons entitled to sue; standing.
- 2761. — Time to sue; limitations and laches.
- 2762. — Parties.
- 2763. — Pleading.
- 2764. — Evidence.
- 2765. — Trial and judgment.
- 2766. — Rescission.
- 2767. — Damages or amount of recovery.
- 2768. — Costs and attorney fees.

**(E) REORGANIZATIONS.**

- 2770. In general.
- 2771. Reincorporation in general.
- 2772. Conversion of corporation from or into other type of business entity.
- 2773. Right of purchasers of corporate franchise and property to reorganize.
- 2774. Agreements to reorganize.
- 2775. — In general.
- 2776. — Requisites and validity.
- 2777. — Modification or rescission.
- 2778. — Construction and operation.
- 2779. Assent of shareholders.
- 2780. Rights and remedies of, and actions by, dissenting shareholders.
- 2781. Proceedings for reorganization.
- 2782. Right to stock in reorganized corporation.
- 2783. Rights of shareholders to property of original corporation.
- 2784. Rights, status, and identity of original and reorganized corporations.
- 2785. Succession to powers and rights of original corporation.
- 2786. Liabilities for debts and acts of original corporation.
- 2787. — In general.
- 2788. — Debts in general.
- 2789. — Contracts in general.
- 2790. — Bonds, mortgages, and liens.
- 2791. — Torts.
- 2792. — Judgments.

**X. MERGERS, ACQUISITIONS, AND REORGANIZATIONS.(Cont'd)**

- 2793. Actions by or against reorganized corporation.

**(F) SPIN-OFFS, SPLIT-OFFS, AND CORPORATE DIVISIONS.**

- 2800. In general.
- 2801. Authority to effectuate transaction.
- 2802. Requisites and validity.
- 2803. Assent of shareholders.
- 2804. Rights and remedies of, and actions by, dissenting shareholders.
- 2805. Proceedings for transaction.
- 2806. Rights and liabilities of original and resulting corporations.
- 2807. Actions.

**(G) ANTI-TAKEOVER MEASURES AND DEVICES.**

- 2810. In general.
- 2811. Constitutional and statutory provisions.
- 2812. Fiduciary duties of directors and officers.
- 2813. — In general.
- 2814. — Actions by minority shareholders; judicial scrutiny.
- 2815. Control share acquisitions.
- 2816. Validity of provisions in articles of incorporation or bylaws.
- 2817. Poison pills.
- 2818. Lockups.
- 2819. Actions.

**XI. INSOLVENCY AND RECEIVERS.****(A) INSOLVENCY IN GENERAL.**

- 2830. In general.
- 2831. What constitutes corporate insolvency.
- 2832. Application of general insolvency laws.
- 2833. Constitutional and statutory provisions.
- 2834. Evidence of insolvency.
- 2835. Trust fund doctrine in general.

**(B) FRAUDULENT CONVEYANCES AND PREFERENCES.**

- 2840. In general.
- 2841. Conveyances when insolvent or in contemplation of insolvency.
- 2842. — In general.
- 2843. — Trust fund doctrine.
- 2844. — After refusing payment of debt.



**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****XI. INSOLVENCY AND RECEIVERS.(Cont'd)**

- 2845. — Transfer to or for the benefit of directors, officers, or shareholders.
- 2846. — Transfer to another corporation having same directors, officers, or shareholders.
- 2847. — Transfer to trustee to secure or pay debts.
- 2848. — Bona fide purchasers.
- 2849. Preferences to creditors in general.
- 2850. — In general.
- 2851. — Trust fund doctrine.
- 2852. — In due course of business.
- 2853. — Promoting suits or attachments and confessing judgment.
- 2854. — Intent to prefer or secure preference.
- 2855. — Security.
- 2856. Preferences to directors, officers, or shareholders.
- 2857. — In general.
- 2858. — Trust fund doctrine.
- 2859. — Right to give or secure in general.
- 2860. — Vote or resolution authorizing preference.
- 2861. — Promoting suits or attachment and confessing judgment.
- 2862. — Payments to protect from personal liability.
- 2863. — Preference for debt for which director, officer, or shareholder is surety, guarantor, or indemnitor.
- 2864. — Preference to corporation having same directors, officers, or shareholders.
- 2865. — Preference to relative of director, officer, or shareholder.
- 2866. — Operation and effect.
- 2867. Remedies of shareholders or members in general.

**(C) CREDITORS' REMEDIES IN GENERAL.**

- 2870. In general.
- 2871. Sequestration and statutory remedies in lieu thereof.
- 2872. Attachment.
- 2873. As to fraudulent or preferential transfers.
- 2874. Creditors' suits.
- 2875. — In general.

**XI. INSOLVENCY AND RECEIVERS.(Cont'd)**

- 2876. — Nature and scope of remedy.
- 2877. — Right to remedy.
- 2878. — Conditions precedent.
- 2879. — Persons entitled to sue; standing.
- 2880. — Jurisdiction.
- 2881. — Time to sue; limitations and laches.
- 2882. — Rights acquired by suit.
- 2883. — Parties.
- 2884. — Pleading.
- 2885. — Evidence.
- 2886. — Judgment or decree.
- 2887. — Costs and attorney fees.
- 2888. Assignment for benefit of creditors.
- 2889. — In general.
- 2890. — Right to make.
- 2891. — Requisites and validity in general.
- 2892. — Assent of shareholders.
- 2893. — Preferences.
- 2894. — Fraud.
- 2895. — Operation and effect.
- 2896. — Removal of assignee and appointment of receiver.
- 2897. — Rights and remedies of creditors.
- 2898. — Powers and proceedings of assignee.

**(D) RECEIVERSHIP.**

- 2910. In general.
- 2911. Appointment of receiver.
- 2912. — In general.
- 2913. — Grounds.
  - (1). In general.
  - (2). Discretion of court.
  - (3). Insolvency and preference of creditors.
  - (4). Assignment for benefit of creditors.
  - (5). Dissensions as to management.
  - (6). Mismanagement, maladministration, or diversion of assets.
  - (7). Failure to collect debts.
  - (8). Misconduct of directors.
  - (9). No assets to administer.
- 2914. — Conditions precedent.
- 2915. — Proceedings for appointment.
  - (1). In general.
  - (2). Nature of proceedings.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****XI. INSOLVENCY AND RECEIVERS.(Cont'd)**

- (3). Jurisdiction and venue.
- (4). Parties on application.
- (5). Pleading.
- (6). Evidence.
- (7). Notice and hearing.
- (8). Scope of inquiry or relief.
- (9). Costs and attorney fees.
- 2916. — Appointment, qualification, and tenure.
- 2917. — Compensation.
- 2918. — Termination.
- 2919. — Operation and effect.
  - (1). In general.
  - (2). Collateral attack.
  - (3). On rights and franchises of corporation.
  - (4). On authority of officers.
  - (5). On rights and remedies of creditors.
  - (6). On suits by or against corporation.
- 2920. Powers, duties and liabilities of receiver.
- 2921. — In general.
- 2922. — Representing creditors and shareholders.
- 2923. — Representing corporation.
- 2924. — Title to and possession of property.
- 2925. — Sale of franchises and property.
- 2926. — Setting aside or vacating judgments against corporation.
- 2927. Actions by or against receivers.
- 2928. — In general.
- 2929. — Conditions precedent.
- 2930. — Jurisdiction and venue.
- 2931. — Time to sue; limitations and laches.
- 2932. — Parties.
- 2933. — Pleading.
- 2934. — Evidence.
- 2935. — Trial and judgment.
- 2936. — Costs and attorney fees.

**(E) COLLECTION OF ASSETS, ENFORCEMENT OF LIABILITIES, AND PAYMENT OF CLAIMS.**

- 2940. In general.
- 2941. Collection of assets in general.
- 2942. — In general.

**XI. INSOLVENCY AND RECEIVERS.(Cont'd)**

- 2943. — Rights as to fraudulent conveyances.
- 2944. — Right to avoid contracts and conveyances.
- 2945. Collection of unpaid subscriptions.
- 2946. — In general.
- 2947. — Right to enforce liability.
- 2948. — Call or assessment.
- 2949. Enforcement of liabilities of corporate principals.
- 2950. — In general.
- 2951. — Promoters.
- 2952. — Directors.
- 2953. — Officers.
- 2954. — Shareholders.
- 2955. Enforcement of rights of shareholders.
- 2956. Presentation and allowance of claims.
- 2957. — In general.
- 2958. — Claims provable.
- 2959. — Amount.
- 2960. — Necessity and sufficiency of presentation.
- 2961. — Time for presentation.
- 2962. — Proof of claim.
- 2963. — Objections and proceedings thereon.
- 2964. — Allowance or disallowance.
- 2965. — Effect of proof of claim.
- 2966. Priorities of claims.
- 2967. — In general.
- 2968. — Compensation and expenses of receiver.
- 2969. — Judgment creditors.
- 2970. — Bondholders and mortgagees.
- 2971. — Attorneys and other professionals.
- 2972. — Directors, officers and agents.
- 2973. — Shareholders.
- 2974. — Employees.
- 2975. — Mechanics' liens.
- 2976. Set-offs of or against claims.
- 2977. Payment or distribution.
- 2978. Actions by or against insolvent corporation.

**XII. DISSOLUTION AND FORFEITURE OF FRANCHISE.****(A) IN GENERAL.**

- 2990. In general.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****XII. DISSOLUTION AND FORFEITURE  
OF FRANCHISE.(Cont'd)**

- 2991. Constitutional and statutory provisions.
- 2992. Causes and grounds.
- 2993. — In general.
- 2994. — Invalid or fraudulent corporation.
- 2995. — Limitation of term.
- 2996. — Failure to file annual report or pay fee.
- 2997. — Condition or contingency prescribed by charter or articles of incorporation.
- 2998. — Nonuser or surrender of franchise.
- 2999. — Misuse of franchise or powers.
- 3000. — Exercise of franchise or power not conferred.
- 3001. — Violation of charter or statute.
- 3002. — Deficiency of shareholders, members, or officers.
- 3003. — Director or shareholder deadlock.
- 3004. — Failure of purpose of incorporation.
- 3005. — Transfer of franchise.
- 3006. — Loss or transfer of capital or property.
- 3007. — Insolvency or nonpayment of debts.
- 3008. — Suspension of business.
- 3009. — Interests of shareholders.
- 3010. Defenses and waiver of grounds for dissolution or forfeiture.

**(B) PROCEEDINGS FOR DISSOLUTION  
OR FORFEITURE.****1. IN GENERAL.**

- 3020. In general.
- 3021. Necessity of judicial or other proceedings.
- 3022. Jurisdiction and venue.

**2. VOLUNTARY DISSOLUTION.**

- 3030. In general.
- 3031. Action of shareholders.
- 3032. Petition or application.
- 3033. Notice.
- 3034. Costs and attorney fees.
- 3035. Setting aside dissolution.

**3. ADVERSARY OR ENFORCED DISSOLUTION  
OR FORFEITURE.**

- 3040. In general.
- 3041. By or in name of state or public officers.
- 3042. — In general.
- 3043. — Authority or duty to bring proceedings.
- 3044. — Nature and form in general.
- 3045. — Parties.
- 3046. — Information.
- 3047. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Admissibility.
  - (4). Weight and sufficiency.
- 3048. — Dismissal of proceedings.
- 3049. — Judgment.
- 3050. By shareholders, members, or officers.
- 3051. — In general.
- 3052. — Nature and form of remedy.
- 3053. — Persons entitled to sue; standing.
- 3054. — Parties.
- 3055. — Pleading.
- 3056. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Admissibility.
  - (4). Weight and sufficiency.
- 3057. — Dismissal of proceedings.
- 3058. — Election to avoid dissolution by purchasing stock.
  - (1). In general.
  - (2). Valuation of stock.
- 3059. — Judgment, decree, or order.
  - (1). In general.
  - (2). Order to purchase stock.
- 3060. By creditors.
- 3061. — In general.
- 3062. — Nature and form of remedy.
- 3063. — Persons entitled to sue; standing.
- 3064. — Parties.
- 3065. — Pleading.
- 3066. — Evidence.
- 3067. — Judgment or decree.

**4. REVIEW.**

- 3070. In general.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****XII. DISSOLUTION AND FORFEITURE  
OF FRANCHISE.(Cont'd)**

3071. Right to review.  
3072. Standard and scope of review.

**(C) OPERATION AND EFFECT OF DISSOLUTION  
OR FORFEITURE IN GENERAL.**

3080. In general.  
3081. Conveyances and preferences after proceedings for dissolution.  
3082. Effect of dissolution in general.  
3083. — In general.  
3084. — Effect on contracts and rights in general.  
3085. — Extinguishment of debts.  
3086. — Effect on judgments.  
3087. — Effect on pending proceedings.  
3088. Continuance of corporation for purpose of winding up.  
3089. — In general.  
3090. — Prohibition on engaging in new business.  
3091. — Officers and other trustees.  
3092. Reinstatement after dissolution or forfeiture.

**(D) RECEIVERSHIP.**

3100. In general.  
3101. Appointment.  
3102. — In general.  
3103. — Grounds for appointment.  
3104. — Right or authority to appoint.  
3105. — Who may apply for receiver.  
3106. — Who may act as receiver.  
3107. — Order appointing receiver.  
3108. — Bond.  
3109. — Pending proceedings for dissolution.  
3110. — Effect.  
3111. — Tenure.  
3112. Powers, duties, and liabilities of receiver in general.  
3113. — In general.  
3114. — Sale of franchise and property.  
3115. — Representing creditors and shareholders.  
3116. — Actions.  
3117. — Report and accounting.

**(E) COLLECTION OF ASSETS, ENFORCEMENT OF  
LIABILITIES, AND PAYMENT OF CLAIMS.**

3120. In general.  
3121. Collection of assets.  
3122. Collection of unpaid subscriptions.  
3123. Enforcement of liabilities of directors, officers, and shareholders.  
3124. Presentation and allowance of claims.  
3125. — In general.  
3126. — Claims provable.  
3127. — Amount of claim.  
3128. — Necessity and sufficiency of presentation.  
3129. — Time for presentation.  
3130. — Proof of claims.  
3131. — Objections and proceedings thereon.  
3132. — Allowance or disallowance.  
3133. Priorities of claims.  
3134. — In general.  
3135. — Compensation and expenses of receiver.  
3136. — Judgment creditors.  
3137. — Bondholders and mortgagees.  
3138. — Directors, officers, agents, and shareholders.  
3139. — Employees.  
3140. Payment of claims.  
3141. Distributions to shareholders.  
3142. — In general.  
3143. — Liquidating dividend.

**(F) ACTIONS BY OR AGAINST CORPORATION  
AFTER DISSOLUTION OR FORFEITURE.**

3150. In general.  
3151. Capacity of corporation to sue and be sued.  
3152. Jurisdiction and venue.  
3153. Persons entitled to sue; standing.  
3154. Time to sue; limitations and laches.  
3155. Process.  
3156. Parties.  
3157. Pleading.  
3158. Evidence.  
3159. — In general.  
3160. — Presumptions and burden of proof.  
3161. — Admissibility.  
3162. — Weight and sufficiency.  
3163. Trial and judgment.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****XII. DISSOLUTION AND FORFEITURE  
OF FRANCHISE.(Cont'd)**

- 3164. Damages or amount of recovery.
- 3165. Costs and attorney fees.

**XIII. FOREIGN CORPORATIONS.****(A) IN GENERAL.**

- 3170. In general.
- 3171. Grounds of recognition in general.
- 3172. What are foreign corporations.
- 3173. Evidence of incorporation.
- 3174. Domestication in general.
- 3175. Incorporating under foreign laws for business in state of residence.
- 3176. Power to exclude, restrict, or regulate.
- 3177. Constitutional and statutory provisions.
- 3178. — In general.
- 3179. — Purpose.
- 3180. — Validity.
- 3181. — Retroactive effect.
- 3182. Subjection to general laws and policy of state.
- 3183. — In general.
- 3184. — Comity.
- 3185. Subjection to laws governing domestic corporations.
- 3186. Subjection to requirements as imposed by state of incorporation; what law governs.
- 3187. — In general.
- 3188. — Internal affairs doctrine in general.
- 3189. — Corporate governance in general.
- 3190. — Piercing corporate veil.
- 3191. — Derivative actions.

**(B) OBTAINING AUTHORIZATION  
TO DO BUSINESS.**

- 3200. In general.
- 3201. What constitutes doing business in state.
- 3202. — In general.
- 3203. — Soliciting stock subscriptions.
- 3204. — Taking negotiable instruments for goods sold or other consideration.
- 3205. — Contracts not made or to be performed wholly within state.
- 3206. — Transacting business through agents or other representatives.

**XIII. FOREIGN CORPORATIONS.(Cont'd)**

- 3207. — Consignments or transactions in which the corporation has not the primary or real interest.
- 3208. — Isolated transactions.
- 3209. — Engaging in litigation.
- 3210. Compliance with requirements in general.
- 3211. Filing charter or articles of incorporation.
- 3212. Designation of place of business.
- 3213. Designation of agent.
- 3214. — In general.
- 3215. — For service of process.
- 3216. Deposit of securities.
- 3217. Obtaining license or certificate to do business.
- 3218. — In general.
- 3219. — Name.
- 3220. — Payment of fee.
- 3221. Reports, statements, and examinations.
- 3222. Access to corporate books and records.
- 3223. Expulsion or withdrawal of permission to do business.
- 3224. Penalties for violation of statute.
- 3225. Liabilities of shareholders, directors, officers, and agents for failure to comply with statutory requirements.

**(C) OPERATION AND EFFECT OF BEING  
AUTHORIZED TO DO BUSINESS IN  
GENERAL.**

- 3230. In general.
- 3231. Business or transactions permitted in general.
- 3232. Acquiring, holding, and conveying property.
- 3233. — In general.
- 3234. — Real property.
- 3235. Contracts.
- 3236. — In general.
- 3237. — Right to contract and validity in general.
- 3238. — What law governs.
- 3239. — Complying with statutory requirements and obtaining permission to do business.
  - (1). In general.
  - (2). Filing charter or articles of incorporation.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****XIII. FOREIGN CORPORATIONS.(Cont'd)**

- (3). Designation of place of business and agent in general.
- (4). Designation of agent for service of process.
- (5). Obtaining license or certificate.
- 3240. Torts.
- 3241. Estoppel.

**(D) ACTIONS BY OR AGAINST FOREIGN CORPORATIONS.**

- 3250. In general.
- 3251. Remedies on invalid acts in general.
- 3252. Right to sue or defend.
- 3253. — In general.
- 3254. — Depending on compliance with statutory requirements.
  - (1). In general.
  - (2). Filing charter or articles of incorporation.
  - (3). Designation of place of business and agent in general.
  - (4). Designation of agent for service of process.
  - (5). Obtaining or renewing license or certificate.
  - (6). Making and filing reports and statements.
- 3255. Liability to be sued.
- 3256. Nature and form of action.
- 3257. Jurisdiction.
 

*Personal jurisdiction over nonresidents, or "long-arm" jurisdiction, see COURTS ¶13.1, FEDERAL COURTS X.*
- 3258. Venue.
- 3259. Persons entitled to sue; standing.
- 3260. Time to sue; limitations and laches.
- 3261. Parties.
- 3262. Process.
- 3263. — In general.
- 3264. — Exclusiveness of statutes authorizing service on designated persons.
- 3265. — Form and requisites.
- 3266. — On whom service may be made.
  - (1). In general.
  - (2). Designated or authorized agent.
  - (3). "Principal," "local," "managing," or "head" officer or agent.
  - (4). On agent connected with the cause of action.

**XIII. FOREIGN CORPORATIONS.(Cont'd)**

- (5). Officers or agents casually or unofficially within state.
- (6). Absence or disqualification of officer or designated agent.
- (7). Subsidiaries and officers thereof.
- (8). Branch offices.
- (9). Termination of agency.
- (10). Sufficiency of authority to receive service.
- 3267. — Acceptance of service.
- 3268. — Service on corporation failing to comply with statutory requirements.
- 3269. — Constructive or substituted service.
  - (1). In general.
  - (2). Service by publication.
  - (3). Service by mail.
  - (4). Service on secretary of state or other public official.
- 3270. — Requisites and sufficiency of return of service.
- 3271. — Consent to mode of service by doing business in state.
- 3272. — Objections to service.
- 3273. — Motions to set aside or vacate service.
- 3274. Appearance.
- 3275. Attachment and garnishment.
- 3276. — In general.
- 3277. — Liability as non-resident to attachment.
- 3278. — Compliance with statutory requirements as prerequisite.
- 3279. — Service of writ or notice.
- 3280. — Persons entitled.
- 3281. — Property subject to attachment.
- 3282. — Affidavit, petition, or complaint.
- 3283. — Jurisdiction.
- 3284. — Dissolution, quashing, and discharge.
- 3285. Pleading.
- 3286. — In general.
- 3287. — Corporate existence or right to recognition.
- 3288. — Residence of parties and place where cause of action arose.
- 3289. — Compliance or non-compliance with statutory requirements.
  - (1). In general.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****XIII. FOREIGN CORPORATIONS.(Cont'd)**

- (2). Filing of charter or articles of incorporation.
- (3). Designation of agent and place of business.
- (4). Obtaining license or certificate.
- 3290. — Verification.
- 3291. Evidence.
- 3292. — In general.
- 3293. — Presumptions and burden of proof.
- 3294. — Admissibility.
- 3295. — Weight and sufficiency.
- 3296. Trial.
- 3297. Judgment.
- 3298. Execution and enforcement of judgment.
- 3299. Costs and attorney fees.
- 3300. Crimes and criminal prosecutions.

**(E) INSOLVENCY AND RECEIVERS.**

- 3310. In general.
- 3311. Effect of insolvency in general.
- 3312. Procedure on insolvency.
- 3313. Assignment for benefit of creditors.
- 3314. Protection of resident creditors.
- 3315. Protection of resident shareholders.
- 3316. Receivers.
- 3317. — In general.
- 3318. — Appointment.
- 3319. — Recognition of receiver appointed in home state.
- 3320. — Appointment of ancillary receiver.
- 3321. — Powers and duties of receivers.
- 3322. Claims against insolvent corporations.

**(F) MERGERS, REORGANIZATIONS, AND DISSOLUTION.**

- 3330. In general.
- 3331. Merger or consolidation of corporations of different states.
- 3332. — In general.
- 3333. — Assent of shareholders.
- 3334. — Remedies of dissenting shareholders.
- 3335. — Effect of merger or consolidation.
- 3336. — Rights and liabilities of surviving corporation.
- 3337. Reorganization.

**XIII. FOREIGN CORPORATIONS.(Cont'd)**

- 3338. Dissolution.
- 3339. — In general.
- 3340. — Causes and grounds.
- 3341. — Proceedings for dissolution.
- 3342. — Collection of assets, enforcement of liabilities, and payment of claims.
- 3343. — Actions by or against dissolved corporation.

**XIV. NON-PROFIT CORPORATIONS.**

*Charitable corporations, see CHARITIES.*

**(A) IN GENERAL.**

- 3350. In general.
- 3351. Nature of non-profit corporation.

**(B) DISREGARDING CORPORATE ENTITY; PIERCING CORPORATE VEIL.**

- 3360. In general.
- 3361. Nature of remedy.
- 3362. Reasons and justifications.
- 3363. Particular occasions for determining corporate entity.
- 3364. Actions to pierce corporate veil.

**(C) INCORPORATION AND ORGANIZATION.**

- 3370. In general.
- 3371. Constitutional and statutory provisions.
- 3372. Incorporators and promoters.
- 3373. Purposes of incorporation.
- 3374. Application and certificate or articles of incorporation.
- 3375. Approval and grant of incorporation.

**(D) CORPORATE EXISTENCE AND FRANCHISE.**

- 3380. In general.
- 3381. Commencement and duration.
- 3382. Corporate name.
- 3383. Registered office and agent.
- 3384. Bylaws.
- 3385. Books and records.

**(E) CAPITAL AND STOCK.**

- 3390. In general.
- 3391. Subscription for and issuance of stock.
- 3392. Stock certificates.
- 3393. Transfer of stock.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****(F) SHAREHOLDERS AND MEMBERS.**

- 3400. In general.
- 3401. Who are shareholders or members.
- 3402. Withdrawal, expulsion, suspension, or exclusion.
- 3403. Rights and liabilities as to corporation and other shareholders or members.
- 3404. — In general.
- 3405. — Management of corporate affairs in general.
- 3406. — Inspection of corporate books and records.
- 3407. — Conflicts of interest and dealing with corporation.
- 3408. — Actions.
- 3409. Meetings.
- 3410. — In general.
- 3411. — Calling and notice.
- 3412. — Quorum and votes required to prevail.
- 3413. — Right to vote.
- 3414. Liability for corporate debts and acts.

**(G) DIRECTORS, OFFICERS, AND AGENTS.**

- 3420. In general.
- 3421. Eligibility and qualifications.
- 3422. Election of directors.
- 3423. Authority and functions of directors; meetings.
- 3424. Election or appointment of officers.
- 3425. Authority and functions of officers.
- 3426. Rights, duties, and liabilities as to corporation, shareholders, or members.
- 3427. — In general.
- 3428. — Fiduciary nature of relation.
- 3429. — Compensation.
- 3430. — Management of corporate affairs in general.
- 3431. — Conflicts of interest and dealing with corporation, shareholders, or members.
- 3432. — Actions.
- 3433. Liability for corporate debts and acts.

**(H) DERIVATIVE ACTIONS; SUING OR DEFENDING ON BEHALF OF CORPORATION.**

- 3440. In general.
- 3441. Nature and form of remedy.
- 3442. Persons entitled to sue or defend; standing.

**XIV. NON-PROFIT CORPORATIONS.(Cont'd)**

- 3443. Demanding action and refusal of corporation, directors, or officers to act.
- 3444. Pleading, evidence, trial, and judgment.

**(I) CORPORATE POWERS AND LIABILITIES.**

- 3450. In general.
- 3451. Extent and exercise of powers in general.
- 3452. Representation of corporation by corporate principals.
- 3453. Property and conveyances.
- 3454. Contracts and indebtedness.
- 3455. Torts.
- 3456. Civil actions.
- 3457. — In general.
- 3458. — Jurisdiction and venue.
- 3459. — Process and notice.
- 3460. — Parties and appearance.
- 3461. — Pleading, evidence, trial, and judgment.

**(J) MERGERS, ACQUISITIONS, AND REORGANIZATIONS.**

- 3470. In general.
- 3471. Mergers and consolidations.
- 3472. Sale, lease, or exchange of substantially all corporate assets.
- 3473. Reorganizations.

**(K) INSOLVENCY, DISSOLUTION, AND FORFEITURE OF FRANCHISE.**

- 3480. In general.
- 3481. Causes and grounds.
- 3482. Proceedings for voluntary dissolution.
- 3483. Adversary or enforced dissolution or forfeiture of franchise.
- 3484. Operation and effect of dissolution or forfeiture of franchise.
- 3485. Receivership.
- 3486. Payment of claims and distribution to shareholders or members.

**(L) FOREIGN CORPORATIONS.**

- 3490. In general.
- 3491. What law governs.
- 3492. Obtaining authorization to do business.
- 3493. Expulsion or withdrawal of permission to do business.



**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****XIV. NON-PROFIT CORPORATIONS.**(Cont'd)

3494. Actions by or against foreign corporations.

**XV. UNINCORPORATED BUSINESS ORGANIZATIONS.**

*Joint ventures, see JOINT VENTURES. Partnerships, see PARTNERSHIP.*

**(A) IN GENERAL.**

3500. In general.

3501. Sole proprietorships.

**(B) BUSINESS, TRADE, AND PROFESSIONAL ASSOCIATIONS.**

*Bar associations, law firms, and legal aid organizations, see ATTORNEYS AND LEGAL SERVICES* ¶¶16, IV, and XIX.

3510. In general; nature and status.

3511. Constitutional and statutory provisions.

3512. What law governs.

3513. Formation, organization, and existence.

3514. Membership.

3515. — In general; rights and liabilities.

3516. — Judicial supervision and intervention; abstention doctrine.

3517. — Admission and exclusion; eligibility.

3518. — Withdrawal.

3519. — Expulsion, suspension, and discipline.

3520. — Reinstatement.

3521. — Dues, fines, and assessments.

3522. — Meetings.

3523. — Rights and liabilities as to other members.

3524. — Liability for acts and debts of association.

3525. — Actions.

3526. Directors, officers, and agents.

3527. — In general.

3528. — Election or appointment, qualification, and tenure.

3529. — Rights, duties, and liabilities; actions.

3530. Derivative actions; suing or defending on behalf of association.

3531. Powers, duties, rights, and liabilities of association.

3532. — In general.

3533. — Property, funds, and conveyances.

3534. — Contracts and indebtedness.

**XV. UNINCORPORATED BUSINESS ORGANIZATIONS.**(Cont'd)

3535. — Torts; wrongful acts.

3536. — Actions.

(1). In general.

(2). Right or capacity to sue or be sued.

(3). Jurisdiction and venue.

(4). Persons entitled to sue; standing.

(5). Time to sue; limitations and laches.

(6). Parties.

(7). Process and appearance.

(8). Pleading.

(9). Evidence.

(10). Trial, judgment, and relief.

3537. Mergers, acquisitions, and reorganizations.

3538. Insolvency, dissolution, and receivers.

3539. Foreign associations.

3540. Superior, subordinate, and affiliated bodies.

**(C) JOINT STOCK COMPANIES.**

3550. In general; nature and status.

3551. Constitutional and statutory provisions.

3552. What law governs.

3553. Formation, organization, and existence.

3554. Capital and stock.

3555. Shareholders and members.

3556. — In general; rights and liabilities.

3557. — Dues, fines, and assessments.

3558. — Meetings.

3559. — Rights and liabilities as to other shareholders or members.

3560. — Liability for acts and debts of company.

3561. — Actions.

3562. Directors, officers, and agents.

3563. — In general.

3564. — Election or appointment, qualification, and tenure.

3565. — Rights, duties, and liabilities; actions.

3566. Derivative actions; suing or defending on behalf of company.

3567. Powers, duties, rights, and liabilities of company.

3568. — In general.

3569. — Property, funds, and conveyances.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****XV. UNINCORPORATED BUSINESS ORGANIZATIONS.**(Cont'd)

- 3570. — Contracts and indebtedness.
- 3571. — Torts; wrongful acts.
- 3572. — Actions.
- 3573. Mergers, acquisitions, and reorganizations.
- 3574. Insolvency, dissolution, and receivers.
- 3575. Foreign companies.
- 3576. Partnerships issuing stock; partnership associations.

**(D) BUSINESS TRUSTS.**

- 3580. In general; nature and status.
- 3581. Constitutional and statutory provisions.
- 3582. What law governs.
- 3583. Disregarding trust entity; piercing protective veil.
- 3584. Formation, organization, and existence.
- 3585. Capital and stock; certificates or shares.
- 3586. Shareholders and members; beneficiaries.
- 3587. — In general; rights and liabilities.
- 3588. — Dues, fines, and assessments.
- 3589. — Meetings.
- 3590. — Rights and liabilities as to other shareholders, members, or beneficiaries.
- 3591. — Liability for acts and debts of trust.
- 3592. — Actions.
- 3593. Directors, officers, and agents; trustees.
- 3594. — In general.
- 3595. — Election or appointment, qualification, and tenure.
- 3596. — Rights, duties, and liabilities; actions.
- 3597. Derivative actions; suing or defending on behalf of trust.
- 3598. Powers, duties, rights, and liabilities of trust.
- 3599. — In general.
- 3600. — Property, funds, and conveyances.
- 3601. — Contracts and indebtedness.
- 3602. — Torts; wrongful acts.
- 3603. — Actions.
- 3604. Mergers, acquisitions, and reorganizations.

**XV. UNINCORPORATED BUSINESS ORGANIZATIONS.**(Cont'd)

- 3605. Insolvency, dissolution, and receivers.
- 3606. Liquidation; liquidating trusts.
- 3607. Foreign trusts.

**(E) LIMITED LIABILITY COMPANIES.**

*Limited liability partnerships, see PARTNERSHIP.*  
*Subchapter S corporations, see INTERNAL REVENUE.*

- 3610. In general; nature and status.
- 3611. Constitutional and statutory provisions.
- 3612. What law governs.
- 3613. Disregarding entity; piercing protective veil.
- 3614. — In general.
- 3615. — Particular occasions for determining entity.
- 3616. — Actions to pierce veil.
  - (1). In general.
  - (2). Pleading.
  - (3). Evidence.
- 3617. Formation, organization, and existence.
- 3618. — In general.
- 3619. — Promoters, founders, and organizers.
- 3620. — Purposes of organization; requisite intent.
- 3621. — Organizing documents; operating agreement.
- 3622. — Validity of organization; de facto existence.
- 3623. — Estoppel to deny existence of company.
- 3624. — Name.
- 3625. — Domicile or place of business; registered office and agent.
- 3626. — Books, records, and reports.
- 3627. Capital and stock; contributions.
- 3628. — In general.
- 3629. — Profits and losses; distributions.
- 3630. — Transfer, pledge, or assignment of interest.
- 3631. — Rights of creditors; charging orders.
- 3632. Members, owners, and shareholders.
- 3633. — In general; rights and liabilities.
- 3634. — Who are members, owners, and shareholders; admission and eligibility.
- 3635. — Dissociation; withdrawal.

**101. CORPORATIONS AND BUSINESS ORGANIZATIONS****XV. UNINCORPORATED BUSINESS ORGANIZATIONS.(Cont'd)**

- 3636. — Expulsion, suspension, or exclusion.
- 3637. — Rights and liabilities as to other members, owners, or shareholders in general.
- 3638. — Management of company affairs in general.
- 3639. — Fiduciary duties; loyalty, care, and good faith.
- 3640. — Engaging in competing business; usurping opportunities.
- 3641. — Liability for acts and debts of company.
- 3642. — Actions.
  - (1). In general.
  - (2). Nature and form of remedy.
  - (3). Jurisdiction and venue.
  - (4). Persons entitled to sue; standing.
  - (5). Time to sue; limitations and laches.
  - (6). Parties.
  - (7). Pleading.
  - (8). Evidence.
  - (9). Trial, judgment, and relief.
  - (10). Costs and attorney fees.
- 3643. Directors, officers, and agents; non-member managers.
- 3644. — In general.
- 3645. — Election or appointment, qualification, and tenure.
- 3646. — Rights, duties, and liabilities.
- 3647. — Actions.
  - (1). In general.
  - (2). Persons entitled to sue; standing: parties.
  - (3). Time to sue; limitations and laches.
  - (4). Pleading.
  - (5). Evidence.
  - (6). Trial, judgment, and relief; costs and attorney fees.
- 3648. Derivative actions; suing or defending on behalf of company.
- 3649. Powers, duties, rights, and liabilities of company.
- 3650. — In general.
- 3651. — Property, funds, and conveyances.
- 3652. — Contracts and indebtedness.

**XV. UNINCORPORATED BUSINESS ORGANIZATIONS.(Cont'd)**

- 3653. — Torts; wrongful acts.
- 3654. — Civil actions.
  - (1). In general.
  - (2). Right or capacity to sue or be sued.
  - (3). Jurisdiction and venue.
  - (4). Persons entitled to sue; standing.
  - (5). Time to sue; limitations and laches.
  - (6). Parties.
  - (7). Process and appearance.
  - (8). Pleading.
  - (9). Evidence.
  - (10). Trial, judgment, and relief.
- 3655. — Crimes and prosecutions.
- 3656. Mergers, acquisitions, and reorganizations.
- 3657. Dissolution and forfeiture.
- 3658. — In general.
- 3659. — Grounds.
- 3660. — Proceedings.
- 3661. — Operation and effect.
  - (1). In general.
  - (2). Reinstatement after dissolution or forfeiture.
- 3662. — Receivership.
- 3663. — Assets, liabilities, claims, and distributions.
- 3664. — Actions by or against company after dissolution or forfeiture.
- 3665. Foreign companies.

**102. COSTS, FEES, AND SANCTIONS****SUBJECTS INCLUDED**

- Obligation of parties to litigation to pay the costs and fees associated therewith
- Awards to prevailing parties as reimbursement or indemnity for their expenses therein, payable by adverse parties or out of the subject matter of the litigation
- Nature, grounds, and extent of the right thereto in general

**102. COSTS, FEES, AND SANCTIONS**

Who are entitled to costs and fees, and who are liable therefor, as between parties, and discretion of courts to award costs

Security for payment of costs and fees

Proceedings in forma pauperis

Proceedings, disbursements, etc., for which costs and fees are allowed

Items, rate, and amount of costs and fees

Taxation of costs and fees

Payment and remedies for collection of costs and fees

Sanctions for improper litigation conduct

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Attorney's agreement as to fees or costs, champerty, see **CHAMPERTY AND MAINTENANCE**

Damages, attorney's fees and expenses of litigation as elements, see **DAMAGES**

Discovery sanctions, see **FEDERAL CIVIL PROCEDURE** and **PRETRIAL PROCEDURE**

Fees and expenses of officers and other persons, rights of such persons themselves as distinguished from liabilities as between parties, see **PUBLIC EMPLOYMENT** and other specific topics—

Attorneys, see **ATTORNEYS AND LEGAL SERVICES**

Jurors, see **JURY**

Witnesses, see **WITNESSES**

Particular actions or proceedings having special requirements or making special provisions for costs and fees, see **ADMIRALTY**, **DIVORCE**, **EMINENT DOMAIN**, and other specific topics

Particular classes of persons, rights and liabilities in respect to costs and fees, see **EXECUTORS AND ADMINISTRATORS**, **INFANTS**, and other specific topics

I. IN GENERAL, ⅈ401–420.

II. PAYMENT OF COSTS AND FEES IN GENERAL, ⅈ421–540.

(A) IN GENERAL, ⅈ421–440.

(B) DEPOSIT OR OTHER SECURITY FOR PAYMENT, ⅈ441–470.

(C) INDIGENCE; PROCEEDINGS IN FORMA PAUPERIS, ⅈ471–540.

1. IN GENERAL, ⅈ471–480.

II. PAYMENT OF COSTS AND FEES IN GENERAL—Cont'd

(C) INDIGENCE; PROCEEDINGS IN FORMA PAUPERIS—Cont'd

2. PERSONS ENTITLED TO PROCEED IN FORMA PAUPERIS, ⅈ481–490.

3. APPLICATION TO PROCEED IN FORMA PAUPERIS, ⅈ491–510.

4. COURSE AND CONDUCT OF PROCEEDINGS IN FORMA PAUPERIS, ⅈ511–520.

5. DISMISSAL OF PROCEEDINGS IN FORMA PAUPERIS, ⅈ521–540.

III. AWARDS OF COSTS AND FEES, ⅈ541–930.

(A) IN GENERAL; GROUNDS AND FACTORS CONSIDERED, ⅈ541–670.

1. IN GENERAL, ⅈ541–560.

2. PARTICULAR SUBJECTS OF LITIGATION, ⅈ561–600.

3. PARTICULAR FILINGS AND DETERMINATIONS, ⅈ601–620.

4. PARTICULAR KINDS OF PROCEEDINGS, ⅈ621–630.

5. MULTIPLE PROCEEDINGS, ⅈ631–640.

6. AMOUNT OR VALUE OF RECOVERY, ⅈ641–650.

7. PUBLIC INTEREST OR COMMON BENEFIT; PRIVATE ATTORNEYS GENERAL, ⅈ651–660.

8. MERITLESS OR BAD-FAITH LITIGATION, ⅈ661–670.

(B) AMOUNT AND COMPUTATION OF AWARD, ⅈ671–790.

1. IN GENERAL, ⅈ671–680.

2. ITEMS AWARDABLE AS COSTS IN GENERAL, ⅈ681–720.

3. COSTS OF OBTAINING AND PRESENTING EVIDENCE, ⅈ721–740.

4. ALLOWANCES IN ADDITION TO COSTS, ⅈ741–750.

5. REDUCED COSTS, ⅈ751–760.

6. LEGAL EXPENSES; ATTORNEY FEES, ⅈ761–790.

(C) PERSONS ENTITLED TO AWARD, ⅈ791–810.

(D) PERSONS, PROPERTY, AND FUNDS LIABLE FOR AWARD, ⅈ811–830.

(E) ALLOCATION AND APPORTIONMENT OF AWARD, ⅈ831–840.

(F) EFFECT ON AWARD OF OFFER OF JUDGMENT OR SETTLEMENT, ⅈ841–860.

**102. COSTS, FEES, AND SANCTIONS****III. AWARDS OF COSTS AND FEES**

—Cont'd

- (G) PROCEEDINGS TO AWARD; TAXATION, ⚭861–900.
- (H) PAYMENT AND ENFORCEMENT OF AWARD, ⚭901–930.
  - 1. IN GENERAL, ⚭901–910.
  - 2. REMEDIES FOR COLLECTION OF AWARD, ⚭911–930.

**IV. COSTS AND FEES ON APPEAL OR OTHER REVIEW, ⚭931–1080.**

- (A) IN GENERAL, ⚭931–950.
- (B) BONDS OR OTHER SECURITY FOR PAYMENT, ⚭951–1010.
- (C) INDIGENCE; PROCEEDINGS IN FORMA PAUPERIS, ⚭1011–1040.
- (D) AWARDS OF COSTS AND FEES, ⚭1041–1080.

**V. COSTS AND FEES IN CRIMINAL PROCEEDINGS, ⚭1081–1190.**

- (A) IN GENERAL, ⚭1081–1140.
- (B) ON APPEAL OR OTHER REVIEW, ⚭1141–1170.

- (C) IN POSTCONVICTION PROCEEDINGS, ⚭1171–1190.

**VI. SANCTIONS, ⚭1191–1403.**

- (A) IN GENERAL, ⚭1191–1200.
- (B) GROUNDS FOR IMPOSITION, ⚭1201–1290.
  - 1. IN GENERAL, ⚭1201–1220.
  - 2. PLEADINGS, ⚭1221–1250.
  - 3. MOTIONS AND OTHER PARTICULAR PAPERS, ⚭1251–1270.
  - 4. OTHER SANCTIONABLE CONDUCT, ⚭1271–1290.
- (C) DEFENSES, ⚭1291–1300.
- (D) PERSONS LIABLE FOR OR ENTITLED TO SANCTIONS, ⚭1301–1310.
- (E) TYPE AND AMOUNT, ⚭1311–1330.
- (F) PROCEEDINGS TO IMPOSE, ⚭1331–1360.
- (G) SANCTIONS ON APPEAL OR OTHER REVIEW, ⚭1361–1390.
- (H) SANCTIONS IN CRIMINAL PROCEEDINGS, ⚭1391–1400.
- (I) PAYMENT, COLLECTION, AND ENFORCEMENT, ⚭1401–1403.

**I. IN GENERAL.**

- 401. In general.
- 402. Constitutional, statutory, and regulatory provisions.
- 403. — In general.
- 404. — Purpose and construction in general.
- 405. — Power to enact; validity.

**I. IN GENERAL.(Cont'd)**

- (1). In general.
- (2). Proceedings in forma pauperis.
- (3). Proceedings on appeal or other review.
- (4). Criminal proceedings.
- (5). Sanctions.
- 406. — Retroactive or prospective operation.
  - (1). In general.
  - (2). Proceedings in forma pauperis.
  - (3). Proceedings on appeal or other review.
  - (4). Criminal proceedings.
  - (5). Sanctions.
- 407. What law governs.
- 408. — In general.
- 409. — Proceedings in forma pauperis.
- 410. — Proceedings on appeal or other review.
- 411. — Criminal proceedings.
- 412. — Sanctions.
- 413. Relation between state and federal law; preemption.
- 414. — In general.
- 415. — Proceedings in forma pauperis.
- 416. — Proceedings on appeal or other review.
- 417. — Criminal proceedings.
- 418. — Sanctions.

**II. PAYMENT OF COSTS AND FEES IN GENERAL.****(A) IN GENERAL.**

- 421. In general.
- 422. Particular costs and fees.
- 423. — In general.
- 424. — Writs, process, and notices.
- 425. — Filing pleadings and other papers.
- 426. — Entries and records.
- 427. — Trials and dockets.
- 428. — Certificates, returns, and reports.
- 429. — Copies, duplicates, and exemplifications.
- 430. Time for payment.
- 431. Effect of failure to pay.
- 432. — In general.
- 433. — Dismissal.

**102. COSTS, FEES, AND SANCTIONS****(B) DEPOSIT OR OTHER SECURITY FOR PAYMENT.**

- 441. In general.
- 442. Nature and grounds of right.
- 443. Discretion of court.
- 444. Cases in which security may be required.
- 445. Persons or parties from whom security may be required.
- 446. Residence as affecting right to require security.
- 447. Time for application.
- 448. — In general.
- 449. — Laches.
- 450. Form, requisites, and sufficiency of application.
- 451. Hearing, determination, and order.
- 452. Time for giving security.
- 453. Amount of security.
- 454. Form of security.
- 455. — In general.
- 456. — Bond, undertaking, or recognizance.
- 457. Additional or new security.
- 458. Objections and exceptions.
- 459. Liabilities, enforcement, and remedies.
- 460. — In general.
- 461. — On bonds, undertakings, or recognizances.
- 462. Waiver of security or of defects.
- 463. Effect of failure to give security.

**(C) INDIGENCE; PROCEEDINGS IN FORMA PAUPERIS.****1. IN GENERAL.**

- 471. In general.
- 472. Nature and grounds of right to proceed in forma pauperis.
- 473. — In general.
- 474. — Participation without prepayment; postponement of payment.
- 475. Nature of proceedings which may be pursued in forma pauperis.
- 476. Discretion of court.

**2. PERSONS ENTITLED TO PROCEED IN FORMA PAUPERIS.**

- 481. In general.
- 482. Prisoners in general.
- 483. Effect of litigation history.
- 484. — In general.

**II. PAYMENT OF COSTS AND FEES IN GENERAL.(Cont'd)**

- 485. — Prisoners; “three strikes”.
- 486. Danger of harm.

**3. APPLICATION TO PROCEED IN FORMA PAUPERIS.**

- 491. In general.
- 492. Time for making application.
- 493. Notice of application.
- 494. Form, requisites, and sufficiency of application.
- 495. Proceedings on application; hearing and determination.
- 496. Material considered; evidence.
- 497. — In general.
- 498. — Affidavits; oath.
  - (1). In general.
  - (2). Prisoners.
- 499. — Prisoner account statements.
- 500. Order granting or refusing status.
- 501. Reconsideration.

**4. COURSE AND CONDUCT OF PROCEEDINGS IN FORMA PAUPERIS.**

- 511. In general.
- 512. Nature and amount of costs and fees at issue.
- 513. — In general.
- 514. — Reduction of amount; partial fees.
- 515. — Periodic payments; installments.
- 516. — Evidence, witnesses, and discovery.
- 517. Payment by others.
- 518. Judgment for costs.

**5. DISMISSAL OF PROCEEDINGS IN FORMA PAUPERIS.**

- 521. In general.
- 522. Grounds.
- 523. — In general.
- 524. — Failure to state claim.
  - (1). In general.
  - (2). Claims by prisoners.
- 525. — Immunity of defendant.
- 526. — Frivolous or malicious litigation.
  - (1). In general.
  - (2). Prisoner litigation.
- 527. — Noncompliance with requirements for proceeding in forma pauperis.
  - (1). In general.

**102. COSTS, FEES, AND SANCTIONS****II. PAYMENT OF COSTS AND FEES  
IN GENERAL.**(Cont'd)

(2). Absence of poverty.

528. Proceedings to dismiss; hearing and determination.

529. — In general.

530. — Necessity of motion; sua sponte dismissal.

531. Material considered; evidence.

532. — In general.

533. — Martinez reports.

534. Order of dismissal.

535. — In general.

536. — With or without prejudice; leave to amend.

537. Reconsideration.

**III. AWARDS OF COSTS AND FEES.****(A) IN GENERAL; GROUNDS AND  
FACTORS CONSIDERED.****1. IN GENERAL.**

541. In general.

542. Necessity of authorization for award; “American rule”.

543. — In general.

544. — Statutory or contractual authorization.

545. — Equitable grounds.

546. Discretion of court.

547. Result of litigation; prevailing party.

548. — In general.

549. — Partial success.

550. — Effect of setoff or counterclaim.

551. Stipulations and agreements as to costs and fees.

552. — In general.

553. — Requisites and validity; reciprocity.

554. — Construction, operation, and effect.

555. Ability to pay.

556. Necessity and effect of demand before suit.

557. Payment or satisfaction after commencement of action.

558. Time of vesting of right.

559. Waiver or other loss of right.

**2. PARTICULAR SUBJECTS OF LITIGATION.**

561. In general.

562. Commercial transactions in general.

563. Contracts.

564. — In general.

565. — Oral contracts.

566. — Implied and constructive contracts; quantum meruit and unjust enrichment.

567. — Prompt payment acts.

568. Torts.

569. — In general.

570. — Intentional torts.

571. — Negligence.

572. — Products liability.

573. — Tortious interference.

574. — Fraud and fiduciary duties.

575. — Abuse of process.

576. — Other particular torts.

577. Property.

578. — In general.

579. — Real property in general.

580. — Conveyances; vendor and purchaser.

581. — Intellectual property.

582. Leases.

583. — In general.

584. — Personal property leases.

585. — Ground leases.

586. Accounts.

587. Carriers.

588. Contribution, indemnity, and subrogation.

589. Duty of good faith and fair dealing.

590. Anti-SLAPP laws.

591. Multiple subjects.

592. — In general.

593. — Separate issues, counts, or causes of action.

**3. PARTICULAR FILINGS AND DETERMINATIONS.**

601. In general.

602. Motions and orders in general.

603. Amended or supplemental pleadings.

604. Disclaimer.

605. Demurrer, dismissal, or nonsuit.

606. Judgment.

607. — In general.

608. — Judgment by confession.

**102. COSTS, FEES, AND SANCTIONS****III. AWARDS OF COSTS AND FEES.(Cont'd)**

- 609. — Judgment on consent, offer, or admission.
- 610. — Default judgment.
- 611. — Summary judgment.
- 612. New trial.
- 613. Remand after appeal or other review.
- 614. Abatement or abandonment of proceedings.

**4. PARTICULAR KINDS OF PROCEEDINGS.**

- 621. In general.
- 622. Equitable actions and proceedings.
- 623. Class actions.
- 624. Special proceedings.

**5. MULTIPLE PROCEEDINGS.**

- 631. In general.
- 632. On same cause of action.
- 633. Joinder or nonjoinder of causes of action.
- 634. Failure to set off or counterclaim.
- 635. Consolidation.

**6. AMOUNT OR VALUE OF RECOVERY.**

- 641. In general.
- 642. Nominal damages.
- 643. Reduction of claim.
- 644. Interest on recovery.

**7. PUBLIC INTEREST OR COMMON BENEFIT;  
PRIVATE ATTORNEYS GENERAL.**

- 651. In general.
- 652. Substantial benefit.
- 653. Catalyst theory.
- 654. Discretion of court.
- 655. Particular subjects of litigation.
- 656. Class actions.

**8. MERITLESS OR BAD-FAITH LITIGATION.**

- 661. In general.
- 662. Frivolousness.
- 663. Particular litigation conduct.
- 664. — In general.
- 665. — Conduct of defendants.
- 666. — Conduct of third parties.
- 667. Novel claims or defenses; matters of first impression.

**(B) AMOUNT AND COMPUTATION OF AWARD.****1. IN GENERAL.**

- 671. In general.
- 672. Amount involved in litigation; relation to amount of award.

**2. ITEMS AWARDABLE AS COSTS IN GENERAL.**

- 681. In general.
- 682. Pretrial proceedings in general.
- 683. — In general.
- 684. — Alternative dispute resolution.
- 685. Writs and other process.
- 686. Pleadings and motions.
- 687. Change or transfer of venue.
- 688. Continuances and term fees.
- 689. Trial fees.
- 690. Entry and docketing of judgment.
- 691. Proceedings after judgment.
- 692. Disbursements in general.
- 693. — In general.
- 694. — Prospective disbursements.
- 695. Travel expenses in general.
- 696. Research.
- 697. Interpreters and translators.
- 698. Printing and copying.
- 699. Jury fees and costs.
- 700. — In general.
- 701. — Travel expenses.
- 702. Officers' fees and costs.
- 703. — In general.
- 704. — Law enforcement officers.
- 705. — Clerks of court.
- 706. — Stenographers.
- 707. — Guardians ad litem.
- 708. — Referees, commissioners, and masters.
- 709. — Receivers.
- 710. Interest on recovery as costs.

**3. COSTS OF OBTAINING AND  
PRESENTING EVIDENCE.**

- 721. In general.
- 722. Documentary evidence.
- 723. Demonstrative evidence.
- 724. Witnesses.
- 725. — In general.
- 726. — Experts.
- 727. — Travel expenses.
- 728. Exemplifications and exhibits.



**102. COSTS, FEES, AND SANCTIONS****III. AWARDS OF COSTS AND FEES.(Cont'd)**

- 729. Experiments, surveys, and views.
- 730. Discovery.
- 731. — In general.
- 732. — Depositions.
- 733. Affidavits.

**4. ALLOWANCES IN ADDITION TO COSTS.**

- 741. In general.
- 742. Enhanced or increased costs.
- 743. Double or treble costs.
- 744. Particular actions or proceedings in which allowable.
- 745. Class actions; incentive awards.
- 746. Interest on costs.

**5. REDUCED COSTS.**

- 751. In general.
- 752. Half or quarter costs.

**6. LEGAL EXPENSES; ATTORNEY FEES.**

- 761. In general.
- 762. Discretion of court.
- 763. Reasonableness in general.
- 764. Factors considered.
- 765. — In general.
- 766. — Lodestar or touchstone in general.
- 767. — Time spent and rates charged.
  - (1). In general.
  - (2). Particular amounts.
- 768. — Customary or usual charges for similar services.
  - (1). In general.
  - (2). Particular amounts.
- 769. — Nature, extent, and necessity of services performed.
- 770. — Skill, standing, and experience of attorneys involved.
- 771. — Nature, difficulty, and importance of case.
  - (1). In general.
  - (2). Enhancements, multipliers, and incentive awards.
- 772. — Results obtained; benefit to client.
- 773. — Casual or established client.
- 774. — Loss of other employment.
- 775. — Amount involved in litigation; relation to amount of award.
- 776. — Other particular factors.

**III. AWARDS OF COSTS AND FEES.(Cont'd)**

- 777. Ancillary or incidental expenses; overhead.
- 778. — In general.
- 779. — Research.
- 780. — Paralegals, assistants, and secretaries.
- 781. Contingency or certainty of compensation; effect of fee agreement.

**(C) PERSONS ENTITLED TO AWARD.**

- 791. In general.
- 792. Parties of record in general.
- 793. Plaintiffs.
- 794. — In general.
- 795. — Joint plaintiffs.
- 796. Defendants.
- 797. — In general.
- 798. — Joint defendants.
- 799. Nominal and unnecessary parties.
- 800. Relators.
- 801. Representative or official capacity.
- 802. Assignors and assignees.
- 803. Intervenor.
- 804. Pro se litigants.
- 805. Parties to class actions.
- 806. Persons not parties.
- 807. Ownership of costs awarded.

**(D) PERSONS, PROPERTY, AND FUNDS LIABLE FOR AWARD.**

- 811. In general.
- 812. Parties of record in general.
- 813. Plaintiffs.
- 814. — In general.
- 815. — Joint plaintiffs.
- 816. Defendants.
- 817. — In general.
- 818. — Joint defendants.
- 819. Nominal and unnecessary parties.
- 820. Relators.
- 821. Representative or official capacity.
- 822. Assignors and assignees.
- 823. Intervenor.
- 824. Pro se litigants.
- 825. Persons not parties.
- 826. Funds or estate.
- 827. Deposit in court.

**102. COSTS, FEES, AND SANCTIONS****(E) ALLOCATION AND APPORTIONMENT  
OF AWARD.**

- 831. In general.
- 832. Multiple parties.
- 833. — In general.
- 834. — Partial success.
- 835. Multiple issues.
- 836. Multiple counts or causes of action.
- 837. Multiple actions.

**(F) EFFECT ON AWARD OF OFFER OF  
JUDGMENT OR SETTLEMENT.**

- 841. In general.
- 842. Admission or tender in general.
- 843. Offer of judgment in general.
- 844. Payment into court.
- 845. Recovery less favorable than tender or offer.
- 846. Recovery more favorable than tender or offer.
- 847. Recovery of sum admitted to be due.
- 848. Effect of amended complaint after offer of judgment.
- 849. Tender or offer of judgment before action.
- 850. Discretion of court.

**(G) PROCEEDINGS TO AWARD; TAXATION.**

- 861. In general.
- 862. Nature and form of proceeding.
- 863. Condition of cause.
- 864. Jurisdiction and authority.
- 865. — In general.
- 866. — Inferior and superior courts.
- 867. — Amount in controversy.
- 868. Form, requisites, and sufficiency of application.
- 869. — In general.
- 870. — Duty to segregate fees.
- 871. Time for application.
- 872. Parties.
- 873. Notice.
- 874. Bill of costs, statement, or memorandum.
- 875. — In general.
- 876. — Form, requisites, and sufficiency.
- 877. — Affidavit, verification, or certification.
- 878. Objections to taxation or to items.
- 879. Evidence.

**III. AWARDS OF COSTS AND FEES.(Cont'd)**

- 880. — In general.
- 881. — Presumptions, inferences, and burden of proof.
- 882. — Admissibility.
- 883. — Degree of proof.
- 884. — Weight and sufficiency.
- 885. Hearing and determination.
- 886. — In general.
- 887. — Time for determination; laches.
- 888. — Questions of law and fact.
- 889. — Findings, conclusions, and order.
- 890. — Segregation between claims.
- 891. — Apportionment between parties.
- 892. — Reconsideration.
- 893. Remedies for erroneous taxation.
- 894. — In general.
- 895. — Amendment.
- 896. — Retaxation.
- 897. Objections and exceptions.
- 898. Waiver and correction of irregularities and errors.

**(H) PAYMENT AND ENFORCEMENT OF AWARD.****1. IN GENERAL.**

- 901. In general.
- 902. Time for payment of award.
- 903. Requisites and sufficiency of payment of award.
- 904. Set-off against debt, recovery, or other costs.
- 905. Release or remission of liability on award.
- 906. Recovery of amounts paid on award.

**2. REMEDIES FOR COLLECTION OF AWARD.**

- 911. In general.
- 912. Stay of proceedings until payment.
- 913. Stay of subsequent action until payment.
- 914. — In general.
- 915. — New action after dismissal, nonsuit, or discontinuance.
- 916. — Identity or difference in actions or parties.
- 917. — Proceedings to procure stay.
- 918. — Waiver of right to stay.
- 919. Nonpayment as defense to subsequent action.
- 920. Execution.

**102. COSTS, FEES, AND SANCTIONS****III. AWARDS OF COSTS AND FEES.(Cont'd)**

- 921. Summary remedies.
- 922. Attachment of the person.
- 923. Actions.
- 924. Liens.

**IV. COSTS AND FEES ON APPEAL OR OTHER REVIEW.****(A) IN GENERAL.**

- 931. In general.
- 932. Payment of costs and fees in general.
- 933. — In general.
- 934. — Payment of costs in lower court.
- 935. — Payment of fees on appealing or seeking review.
- 936. — Payment of costs or fees for transcript or return.
- 937. Time for payment.
- 938. Effect of failure to pay.
- 939. — In general.
- 940. — Dismissal.

**(B) BONDS OR OTHER SECURITY FOR PAYMENT.**

- 951. In general.
- 952. Necessity of security to perfect appeal or other proceeding.
- 953. — In general.
- 954. — Exemptions in general.
- 955. — Executors and administrators.
- 956. — Guardians.
- 957. — Public entities, officers, and employees.
- 958. Parties by and to whom security to be given.
- 959. — In general.
- 960. — Obligees.
- 961. — Obligors.
- 962. Sureties.
- 963. — In general.
- 964. — Necessity and number.
- 965. — Competency.
- 966. — Sufficiency and justification.
- 967. Amount or penalty of bond or undertaking.
- 968. Conditions of bond or undertaking.
- 969. Form and contents of bond or undertaking.
- 970. — In general.
- 971. — Recitals.

**IV. COSTS AND FEES ON APPEAL OR OTHER REVIEW.(Cont'd)**

- 972. Execution of bond or undertaking.
- 973. — In general.
- 974. — Signature.
- 975. Approval of bond or undertaking.
- 976. — In general.
- 977. — Necessity for approval and authority to approve.
- 978. — Proceedings for approval; sufficiency and effect of approval.
- 979. Delivery or filing and service of bond or undertaking.
- 980. — In general.
- 981. — Necessity for timely filing.
- 982. — Time for giving or filing security in general.
- 983. — Premature execution or filing.
- 984. — Taking proceedings in time.
- 985. — Extension of time and relief in case of failure to file in time.
- 986. Deposit as security.
- 987. Amendment of bond or undertaking.
- 988. Additional or new security.
- 989. — In general.
- 990. — Nature of defect.
- 991. — Time and court for application or filing.
  - (1). In general.
  - (2). Before or after motion to dismiss.
- 992. — New security on second or further appeal.
- 993. Waiver of security or of defects.
- 994. Use of supersedeas bond as appeal bond.
- 995. Bond or undertaking on review of two or more decisions.
- 996. — In general.
- 997. — Appeal from judgment and from order denying new trial.
- 998. Effect of failure to give or defects in security.
- 999. — In general.
- 1000. — Dismissal.

**(C) INDIGENCE; PROCEEDINGS IN FORMA PAUPERIS.**

- 1011. In general.
- 1012. Discretion of court in general.
- 1013. Prisoners.

**102. COSTS, FEES, AND SANCTIONS****IV. COSTS AND FEES ON APPEAL  
OR OTHER REVIEW.(Cont'd)**

- 1014. Application to proceed in forma pauperis.
- 1015. — In general.
- 1016. — Time for making application.
- 1017. — Notice of application.
- 1018. — Form, requisites, and sufficiency of application.
- 1019. — Proceedings on application; hearing and determination.
- 1020. — Material considered; evidence; affidavits and oath.
- 1021. — Order granting or refusing status.
- 1022. — Reconsideration.
- 1023. Course and conduct of proceedings.
- 1024. — In general.
- 1025. — Nature and amount of costs and fees at issue.
- 1026. — Payment by others.
- 1027. Dismissal of proceedings.
- 1028. — In general.
- 1029. — Grounds.
  - (1). In general.
  - (2). Frivolous or malicious proceedings.
  - (3). Noncompliance with requirements for proceeding in forma pauperis.
- 1030. — Proceedings to dismiss; hearing and determination.
- 1031. — Material considered; evidence; affidavits and oath.
- 1032. — Order of dismissal.

**(D) AWARDS OF COSTS AND FEES.**

- 1041. In general.
- 1042. Nature and grounds of right.
- 1043. Power to award.
- 1044. Discretion of court.
- 1045. Nature of review.
- 1046. — In general.
- 1047. — Appeal or error in general.
- 1048. — Appeal from interlocutory judgments or from orders.
- 1049. — Review of decisions of inferior courts or officers.
- 1050. — Review of decisions of justices of the peace.

**IV. COSTS AND FEES ON APPEAL  
OR OTHER REVIEW.(Cont'd)**

- 1051. — Review of decisions of intermediate courts.
- 1052. Result of review; prevailing or successful party.
- 1053. — In general.
- 1054. — Recovery of more favorable judgment.
- 1055. — Dismissal.
- 1056. — Affirmance.
- 1057. — Reversal.
  - (1). In general.
  - (2). As to part of judgment or order.
- 1058. — Modification.
- 1059. Acts or omissions of parties affecting right.
- 1060. — In general.
- 1061. — Failure to raise question in lower court.
- 1062. — Effect of remittitur or offer of reduction.
- 1063. Amount and items.
- 1064. — In general.
- 1065. — Attorney fees.
- 1066. — Expenses of record, abstract, or transcript.
- 1067. — Expenses of briefs.
- 1068. — Increased or reduced costs.
- 1069. Persons entitled.
- 1070. Persons liable.
- 1071. Allocation and apportionment.
- 1072. Proceedings to award; taxation.
- 1073. — In general.
- 1074. — Directions to lower court as to costs.
- 1075. Payment and enforcement of award.
- 1076. Release or remission of liability on award.
- 1077. Recovery of amounts paid on award.

**V. COSTS AND FEES IN CRIMINAL  
PROCEEDINGS.****(A) IN GENERAL.**

- 1081. In general.
- 1082. Payment of costs and fees in general.
- 1083. Security for payment.
- 1084. Indigence; proceedings in forma pauperis.
- 1085. — In general.

**102. COSTS, FEES, AND SANCTIONS****V. COSTS AND FEES IN CRIMINAL PROCEEDINGS.(Cont'd)**

- 1086. — Transcript of prior proceedings.
  - (1). In general.
  - (2). Record of preliminary hearing.
  - (3). Record of suppression hearing.
  - (4). Record of prior trial.
  - (5). Daily transcript.
- 1087. — Production of witnesses or evidence in general.
- 1088. — Expert witnesses or assistance in general.
- 1089. — Investigative assistance.
- 1090. — Medical or psychiatric witnesses or assistance.
- 1091. Power to award costs.
- 1092. Discretion of court or jury.
- 1093. Rights on conviction or acquittal.
- 1094. Amount and items in general.
- 1095. Amount and items taxable against defendant.
  - (1). In general.
  - (2). Court costs in general.
  - (3). Trial and hearing costs.
  - (4). Attorney fees.
  - (5). Officers' fees.
  - (6). Witness fees.
  - (7). Jurors' fees.
  - (8). Pretrial detention.
  - (9). Investigative costs in general.
  - (10). Laboratory costs.
    - (1). In general.
    - (2). Genetic testing; DNA.
  - (11). Surcharges.
  - (12). Assessments dedicated to specific funds.
  - (13). Parole revocation and restitution fines.
  - (14). Amount and items taxable against prosecution.
    - (1). In general.
    - (2). Against United States; Hyde Amendment.
    - (3). Against state.
    - (4). Against county or municipality.
    - (5). Against prosecuting witness.
    - (6). Effect of change of venue or other transfer.
  - (15). Proceedings to impose; taxation.
  - (16). In general.

**V. COSTS AND FEES IN CRIMINAL PROCEEDINGS.(Cont'd)**

- 1118. — Hearing and determination in general.
- 1119. — Determination of defendant's ability to pay.
- 1120. — Award, certificate, or judgment for costs.
- 1121. Payment and enforcement of award.
- 1122. — In general.
- 1123. — Remedies for collection in general.
- 1124. — Execution.
- 1125. — Imprisonment for nonpayment.
- 1126. — Actions.
- 1127. — Enforcement against public entities.
- 1128. — Liens.
- 1129. Release or remission of liability on award.
- 1130. Recovery of amounts paid on award; remedies for erroneous taxation.

**(B) ON APPEAL OR OTHER REVIEW.**

- 1141. In general.
- 1142. Payment of costs and fees in general.
- 1143. — In general.
- 1144. — Effect of failure to pay; dismissal.
- 1145. Security for payment.
- 1146. — In general.
- 1147. — Necessity of bond or undertaking.
- 1148. — Power to require appeal bond.
- 1149. — Requisites of bonds and undertakings.
- 1150. — Amendment, and giving new bond or undertaking.
- 1151. — Amount of security.
- 1152. — Effect of failure to give or defects in security; dismissal.
- 1153. Indigence; proceedings in forma pauperis.
- 1154. — In general; right to allowance.
- 1155. — Frivolous or futile appeals; good faith.
- 1156. — Application or affidavit.
- 1157. — Hearing, determination, certificate, and review.
- 1158. — Dismissal of proceedings.
- 1159. Free record or transcript.
- 1160. — In general.

**102. COSTS, FEES, AND SANCTIONS****V. COSTS AND FEES IN CRIMINAL PROCEEDINGS.(Cont'd)**

- 1161. — Extent of transcript allowable.
- 1162. — Application and proceedings for allowance; review.
- 1163. Awards of costs and fees.
- 1164. — In general.
- 1165. — Attorney fees.
- 1166. — Proceedings to award; taxation.
- 1167. Payment and enforcement of award.
- 1168. Release or remission of liability on award.
- 1169. Recovery of amounts paid on award.

**(C) IN POSTCONVICTION PROCEEDINGS.**

- 1171. In general.
- 1172. Payment of costs and fees in general.
- 1173. — In general.
- 1174. — Filing fees.
- 1175. Security for payment.
- 1176. Indigence; proceedings in forma pauperis.
- 1177. — In general.
- 1178. — Free record or transcript.
- 1179. — Funds for obtaining and presenting evidence.
- 1180. Awards of costs and fees.
- 1181. — In general.
- 1182. — Attorney fees.
- 1183. — Proceedings to award; taxation.
- 1184. Payment and enforcement of award.
- 1185. Release or remission of liability on award.
- 1186. Recovery of amounts paid on award.

**VI. SANCTIONS.****(A) IN GENERAL.**

- 1191. In general.
- 1192. Nature and purpose.
- 1193. Authority to impose.
- 1194. — In general.
- 1195. — Inherent authority.
- 1196. Mandatory duty or discretion.
- 1197. Papers or conduct which may be subject of sanctions.
- 1198. — In general.
- 1199. — Necessity of paper, signature, or filing.

**(B) GROUNDS FOR IMPOSITION.****1. IN GENERAL.**

- 1201. In general.
- 1202. Multiplication of proceedings in general.
- 1203. Unwarranted, groundless, or frivolous papers or claims in general.
- 1204. — In general.
- 1205. — Time as of which paper or claim is judged.
- 1206. Reasonableness or bad faith.
- 1207. — In general.
- 1208. — Objective or subjective standard.
- 1209. Duty of reasonable inquiry.
- 1210. — In general.
- 1211. — As to facts.
- 1212. — As to law.
- 1213. Duty to review, reexamine, reevaluate and supplement; continuing duty.
- 1214. Citation to or discussion of authority.
- 1215. Extension or modification of existing law.
- 1216. Failure to prevail.
- 1217. Pro se filings.
- 1218. Repeated or successive filings.
- 1219. Interposition for improper purpose.

**2. PLEADINGS.**

- 1221. In general.
- 1222. Complaints, petitions, and counter-claims in general.
- 1223. Particular cases and claims.
- 1224. — In general.
- 1225. — Contracts and commercial law in general.
- 1226. — Torts in general.
- 1227. — Constitutional law, civil rights, and discrimination in general.
- 1228. — Antitrust and trade regulation.
- 1229. — Defamation.
- 1230. — Election law.
- 1231. — Environmental law.
- 1232. — Finance, banking, and credit.
- 1233. — Habeas corpus.
- 1234. — Insurance.
- 1235. — Intellectual property.
- 1236. — Labor and employment.
- 1237. — Mortgages and deeds of trust.
- 1238. — Products liability.

**102. COSTS, FEES, AND SANCTIONS****VI. SANCTIONS.(Cont'd)**

- 1239. — Racketeering.
- 1240. — Securities law.
- 1241. — Taxation.
- 1242. Prayers for damages or other relief.
- 1243. Affirmative defenses, effect of.
- 1244. Defensive pleadings; answers and replies.
- 1245. Other particular pleadings.

**3. MOTIONS AND OTHER PARTICULAR PAPERS.**

- 1251. In general.
- 1252. Opposition to motions in general.
- 1253. Briefs and memoranda in general.
- 1254. Particular subjects.
- 1255. — In general.
- 1256. — Pleadings and amendment thereof.
- 1257. — Discovery.
- 1258. — Dismissal.
- 1259. — Default.
- 1260. — Summary judgment.
- 1261. — Disqualification and recusal.
- 1262. — Jurisdiction and venue.
- 1263. — Removal and remand.
- 1264. — Reconsideration, reargument, rehearing, or new trial.
- 1265. — Injunctions.
- 1266. — Costs and fees.
- 1267. — Sanctions.

**4. OTHER SANCTIONABLE CONDUCT.**

- 1271. In general.
- 1272. Parties; improper joinder or nonjoinder.
- 1273. Refusal to dismiss or withdraw.
- 1274. Improper assertion of jurisdiction or venue; process.
- 1275. Misrepresentation or omission of facts or law.
- 1276. Dilatory or untimely conduct.
- 1277. Violation of court orders.
- 1278. Failure to appear in or attend proceedings.
- 1279. Ethics violations and conflicts of interest.
- 1280. Alternative dispute resolution, conduct concerning.
- 1281. Compromise, settlement, and release, conduct concerning.

**VI. SANCTIONS.(Cont'd)**

- 1282. Proceedings prior to removal, conduct concerning.

**(C) DEFENSES.**

- 1291. In general.
- 1292. Partially valid or colorable papers or claims.
- 1293. Voluntary dismissal or withdrawal.
- 1294. Failure of opposing party to seek or obtain dismissal or summary judgment.
- 1295. Reliance on statements of client.
- 1296. Deception by client.

**(D) PERSONS LIABLE FOR OR ENTITLED TO SANCTIONS.**

- 1301. In general.
- 1302. Persons liable.
- 1303. — In general.
- 1304. — Parties in general.
- 1305. — Government or quasi-governmental entities.
- 1306. — Prisoners and pro se litigants.
- 1307. — Non-parties.
- 1308. — Joint and several liability.
- 1309. Persons entitled.

**(E) TYPE AND AMOUNT.**

- 1311. In general.
- 1312. Discretion as to type.
- 1313. Monetary sanctions.
- 1314. — In general.
- 1315. — Discretion as to amount.
- 1316. — Reasonableness.
- 1317. — Awards against parties.
- 1318. — Computation; items and services compensable.
  - (1). In general.
  - (2). Costs and fees.
  - (3). Consequential damages.
  - (4). Multiplication of proceedings.
  - (5). Excessive or unreasonable services or charges.
- 1319. — Ability to pay.
- 1320. — Mitigation.
- 1321. Non-monetary sanctions.
- 1322. — In general.
- 1323. — Dismissal.

**103. COUNTERFEITING****(F) PROCEEDINGS TO IMPOSE.**

- 1331. In general.
- 1332. Nature and form of proceedings.
- 1333. Jurisdiction.
- 1334. Application or motion.
- 1335. — In general.
- 1336. — Necessity; sua sponte imposition.
- 1337. — Form, requisites, and sufficiency.
- 1338. Time for application or motion.
- 1339. — In general.
- 1340. — Safe harbors.
- 1341. Parties.
- 1342. Notice.
- 1343. Evidence.
- 1344. — In general.
- 1345. — Presumptions, inferences, and burden of proof.
- 1346. — Admissibility.
- 1347. — Degree of proof.
- 1348. — Weight and sufficiency.
- 1349. Hearing, determination, and order.
- 1350. — In general.
- 1351. — Time for hearing and determination.
- 1352. — Findings and conclusions.
- 1353. — Operation and effect.
- 1354. Reconsideration, vacation, or setting aside.

**(G) SANCTIONS ON APPEAL OR OTHER REVIEW.**

- 1361. In general.
- 1362. Nature and purpose.
- 1363. Discretion.
- 1364. Grounds.
- 1365. — In general.
- 1366. — Multiplication of proceedings in general.
- 1367. — Frivolousness or delay in general.
- 1368. — Bad faith in general.
- 1369. — Particular cases.
  - (1). In general.
  - (2). Contracts and commercial law.
  - (3). Torts.
  - (4). Constitutional law, civil rights, and discrimination.
  - (5). Insurance.
  - (6). Labor and employment.
- 1370. — Briefs and memoranda.
- 1371. Persons liable.

**VI. SANCTIONS.(Cont'd)**

- 1372. — In general.
- 1373. — Prisoners and pro se litigants.
- 1374. Persons entitled.
- 1375. Type and amount of sanction.
- 1376. — In general.
- 1377. — Monetary sanctions.
  - (1). In general.
  - (2). Costs and fees.
- 1378. — Non-monetary sanctions.
- 1379. Proceedings to impose.
- 1380. — In general.
- 1381. — Jurisdiction.
- 1382. — Application or motion.
  - (1). In general.
  - (2). Necessity; sua sponte imposition.
  - (3). Form, requisites, and sufficiency.
- 1383. — Time for application or motion.
- 1384. — Parties; notice.
- 1385. — Evidence, hearing, determination, and order.
- 1386. Reconsideration, vacation, or setting aside.

**(H) SANCTIONS IN CRIMINAL PROCEEDINGS.**

- 1391. In general.
- 1392. On appeal or other review.
- 1393. In postconviction proceedings.

**(I) PAYMENT, COLLECTION, AND ENFORCEMENT.**

- 1401. In general.
- 1402. Sanctions imposed in criminal proceedings.
- 1403. Contempt.

**103. COUNTERFEITING****SUBJECTS INCLUDED**

- Falsely and fraudulently imitating or altering coin or other money or government obligations or securities
- Uttering, having or pretending to have in possession, offering, advertising, etc., such counterfeits



**103. COUNTERFEITING**

Nature and extent of criminal responsibility therefor

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Internal revenue stamps, forgery of, see INTERNAL REVENUE

Private persons, forgery of instruments written by, see FORGERY

1. Nature and elements of offenses in general.
  - 1.1. — In general.
2. — Subject-matter imitated or altered.
3. — Intent.
4. — Similitude.
5. — Value of counterfeit.
6. Making counterfeits.
7. Mutilation or debasement of coins.
8. Alteration of obligations or securities.
9. Passing or uttering counterfeits.
10. Dealing in counterfeit or illegal money or securities.
11. Possession of counterfeits.
12. Making or possession of tools, instruments, or materials.
13. Defenses.
14. Jurisdiction.
15. Indictment or information.
  - 15.1. — In general.
16. — Requisites and sufficiency.
17. — Issues, proof, and variance.
18. Evidence.
19. Trial.
21. Sentence and punishment.

**104. COUNTIES****SUBJECTS INCLUDED**

Primary territorial divisions of states or territories for political purposes, whether designated as counties or as parishes

Their status as bodies politic and corporate

Their creation, organization, boundaries, alteration and discontinuance

Boards and officers, and their rights, powers, duties, proceedings and liabilities

County property, contracts, indebtedness, bonds and other securities

Claims against counties and precincts, etc., thereof

Actions by or against counties

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Charitable and reformatory institutions, see ASYLUMS AND ASSISTED LIVING FACILITIES, HEALTH, INFANTS, PRISONS

Combined city and county governmental entities, see also MUNICIPAL CORPORATIONS

County courts, see COURTS

Election of county officers, see ELECTION LAW

Judges, including county judges, see JUDGES

Municipal corporations in general, matters relating to, see MUNICIPAL CORPORATIONS

Officers in general, including civil service requirements, and particular classes of county officers, see PUBLIC EMPLOYMENT, CORONERS, NOTARIES, REGISTERS OF DEEDS, SHERIFFS AND CONSTABLES

County attorneys, see DISTRICT AND PROSECUTING ATTORNEYS

Judges, see JUDGES

Justices of the peace, see JUSTICES OF THE PEACE

Roads and bridges, see HIGHWAYS, BRIDGES

Subdivisions of county other than precincts and divisions for special purposes, see JUSTICES OF THE PEACE, TOWNS

Taxes on income; sales and use taxes, see TAXATION

Highway and school taxes, see HIGHWAYS, EDUCATION

License taxes, see LICENSES

Real property taxes imposed by cities, see MUNICIPAL CORPORATIONS

Zoning by counties, see ZONING AND PLANNING

**104. COUNTIES**

- I. CREATION, ALTERATION, EXISTENCE, AND POLITICAL FUNCTIONS, ¶1–19.
- II. GOVERNMENT, ¶20–60.
  - (A) ORGANIZATION AND POWERS IN GENERAL, ¶20–24.
  - (B) COUNTY SEAT, ¶25–37.
  - (C) COUNTY BOARD, ¶38–60.
- III. OFFICERS AND AGENTS, ¶61–102.
- IV. PUBLIC BUILDINGS AND OTHER PROPERTY, ¶103–110.
- V. CONTRACTS, ¶111–130.5.
- VI. COUNTY EXPENSES AND CHARGES AND STATUTORY LIABILITIES, ¶131–140.
- VII. TORTS, ¶141–148.5.
- VIII. FISCAL MANAGEMENT, PUBLIC DEBT, AND SECURITIES, ¶149–188.
- IX. TAXATION, ¶189–195.
- X. TAXPAYERS' SUITS OR ACTIONS, ¶196.
- XI. CLAIMS AGAINST COUNTY, ¶197–207.
- XII. ACTIONS, ¶208–228.

**I. CREATION, ALTERATION, EXISTENCE, AND POLITICAL FUNCTIONS.**

- 1. Nature and status.
- 2. Constitutional and statutory provisions.
- 3. Creation, existence, and incidents in general; charters.
- 4. De facto counties.
- 5. Unorganized counties and unorganized territory.
- 6. Territorial extent and boundaries.
- 7. — In general.  
*See also ZONING AND PLANNING.*
- 8. — Establishment of boundaries.
- 9. Alteration and creation of new counties.
- 9.1. — In general.
- 10. — Change of boundaries in general.
- 11. — Consolidation.
- 12. — Division.
- 13. — Proceedings.
- 14. — Submission of question to popular vote.
- 15. — Operation and effect.
- 16. — Adjustment of rights and liabilities.
  - (1). In general.
  - (2). Liability in respect to indebtedness, and apportionment thereof.
  - (3). Interest.

**I. CREATION, ALTERATION, EXISTENCE, AND POLITICAL FUNCTIONS.(Cont'd)**

- (4). Enforcement of rights and liabilities.
- (5). Payment of obligations.
- 17. Annexation or detachment of territory for special purposes.
- 18. Precincts and divisions for special purposes.
- 19. Classification.

**II. GOVERNMENT.**

**(A) ORGANIZATION AND POWERS IN GENERAL.**

- 20. Nature and constitution in general.
- 20.5. Constitutional and statutory provisions.
- 21. Establishment and organization.
- 21.5. Governmental powers in general.  
*See also ZONING AND PLANNING.*
- 22. Public improvements.
- 23. Judicial supervision.
- 24. Legislative control of acts, rights, and liabilities.

**(B) COUNTY SEAT.**

- 25. Power to establish.
- 26. Constitutional and statutory provisions.
- 27. Location and establishment.
- 28. — In general.
- 29. — Submission of question to popular vote.
- 30. — Operation and effect.
- 31. Removal.
- 32. — In general.
- 33. — Power to remove.
- 34. — Proceedings.
  - (1). In general.
  - (2). Form and contents of petition or remonstrance, and signatures thereto.
  - (3). Amendment and withdrawal of signatures.
  - (4). Notice of hearing.
  - (5). Hearing, decision, and review.
- 35. — Submission of question to popular vote.
  - (1). In general.
  - (2). Qualifications of voters and number of votes required to carry proposition.
  - (3). Canvass and returns and contests.

**104. COUNTIES****II. GOVERNMENT.**(Cont'd)

- (4). Conclusiveness and effect, and re-submission to electors.
- 36. — Operation and effect.
- 37. Change of site of public buildings.

**(C) COUNTY BOARD.**

- 38. Nature and constitution in general.
- 39. Constitutional and statutory provisions.
- 40. Creation and abolition of boards and transfer of powers.
- 41. Appointment or election.
- 42. Eligibility and qualification.
- 43. Term of office, vacancies, and holding over.
- 44. Resignation.
- 45. Removal.
- 46. Compensation.
- 47. Powers and functions in general.
- 48. Supervision of county officers.
- 49. Mode of action in general.
- 50. Delegation of authority.
- 51. Organization.
- 52. Meetings.
- 53. Minutes and records.
- 54. Orders and resolutions.
- 55. Ordinances and by-laws.  
*Certainty, definiteness, vagueness, and overbreadth, see CONSTITUTIONAL LAW.*
- 56. Reconsideration and rescission of action.
- 57. Operation and effect of decisions.
- 58. Appeals from decisions.
- 59. Liabilities of members.
- 60. Criminal responsibility of members.

**III. OFFICERS AND AGENTS.**

*See also PUBLIC EMPLOYMENT for cases involving civil service rules and proceedings.*

- 61. Creation and abolition of offices.
- 62. Appointment or election of officers.
- 63. Appointment of agents or employees.
- 64. Eligibility and qualification.
- 65. Term of office, vacancies, and holding over.
- 66. Resignation.
- 67. Removal or other adverse action.
- 68. Compensation.
- 69. — In general.
- 69.1. — Constitutional and statutory provisions.

**III. OFFICERS AND AGENTS.**(Cont'd)

- 69.2. — Pensions and benefits.
- 70. — Salaries and commissions.
- 71. — Payment from fees.
- 72. — Additional compensation.
- 73. — Reimbursement of expenses.
- 74. — Particular officers, agents and services.
  - (1). In general.
  - (2). Clerk.
  - (3). Treasurer.
  - (4). Auditor.
  - (5). Surveyor.
  - (6). Agents, employees, and deputies.
  - (7). Holder of two or more offices.
- 75. — Allowance, recovery, and payment.
  - (1). In general.
  - (2). Review of decisions.
  - (3). Actions.
  - (4). Payment and recovery back of payments improperly made.
- 76. Fees.
- 77. — In general.
- 78. — Particular officers and services.
  - (.5). In general.
  - (1). Clerk.
  - (2). Treasurer.
  - (3). Auditor.
- 79. — Collection and enforcement.
- 80. — Accounting.
  - (1). In general.
  - (2). Fees to be included in account.
  - (3). Allowance or settlement of account.
- 81. Authority and powers.
- 81.1. — In general.
- 82. — Clerk.
- 83. — Treasurer.
- 84. — Auditor.
- 85. — Inferior ministerial officers.
- 86. — Agents and employees.
- 87. Duties and liabilities.
- 88. — In general.
- 89. — Clerk.
- 90. — Treasurer.
- 91. — Auditor.
- 92. — Inferior ministerial officers.
- 93. — Agents and employees.

**104. COUNTIES****III. OFFICERS AND AGENTS.(Cont'd)**

- 94. Accounting for public funds or other property.
  - (.5). In general.
  - (1). Necessity and time.
  - (2). Charges and credits in general.
  - (3). Interest.
  - (4). Audit and settlement.
  - (5). Review of audit and settlement.
- 95. Liabilities on official bonds.
- 96. — In general.
- 97. — Discharge of sureties.
- 98. — Accrual or release of liability by breach or fulfillment of conditions.
  - (1). In general.
  - (2). Loss of funds through fraud, theft, or failure of depositary.
  - (3). Successive or concurrent bonds.
- 99. — Extent of liability.
- 100. — Summary remedies.
- 101. — Actions.
  - (.5). In general.
  - (1). Nature and form.
  - (2). Conditions precedent.
  - (3). Defenses.
  - (4). Limitations.

*See also LIMITATION OF ACTIONS.*

  - (5). Parties.
  - (6). Pleading.
  - (7). Evidence.
  - (8). Costs and expenses.
  - (9). Trial, judgment, compromise and review.
- 102. Criminal responsibility.

**IV. PUBLIC BUILDINGS AND OTHER PROPERTY.**

- 103. Capacity to acquire and hold property.
- 104. Mode of acquiring property.
- 105. Construction of buildings and other works.
  - (1). In general.
  - (2). Submission to popular vote.
- 106. Use of property.
- 107. Control and regulation of public property, buildings, and places.
- 108. Power to sell and convey.
- 109. Power to mortgage.
- 110. Sale or other disposition of property.

**V. CONTRACTS.**

- 111. Capacity to contract in general.
  - (1). In general.
  - (2). Conditions precedent to contracting.
- 112. Constitutional and statutory provisions.
- 113. Powers of county board.
  - (1). In general.
  - (2). Power to contract so as to bind successors.
  - (3). Construction of buildings.
  - (4). County printing, stationery, and records.
  - (5). Employment of counsel.
  - (6). Employment of agents, assistants, and servants.
- 114. Powers of particular boards or officers.
- 115. Proposals or bids.
- 116. — In general.
- 117. — Request or advertisement.
- 118. — Form and requisites.
- 119. — Deposit or other security.
- 120. — Acceptance or rejection.
- 121. Formal requisites.
- 122. Validity and sufficiency.
  - (1). In general.
  - (2). Individual interest of officer.
- 123. Contractors' bonds.
- 124. Unauthorized or illegal contracts.
  - (1). In general.
  - (2). Ratification.
  - (3). Curative acts.
- 125. Implied contracts.
- 126. Construction and operation.
- 126.5. Assignment.
- 127. Modification or rescission.
- 128. Performance or breach.
- 129. Rights and remedies of contractor and sureties.
- 130. Rights and remedies of county.
- 130.5. Priority of county as creditor.

**VI. COUNTY EXPENSES AND CHARGES AND STATUTORY LIABILITIES.**

- 131. Nature and grounds of liability.
- 132. Constitutional and statutory provisions.
- 133. Expenses of county government in general.
- 134. Election expenses.

**104. COUNTIES****VI. COUNTY EXPENSES AND CHARGES AND STATUTORY LIABILITIES.(Cont'd)**

- 135. Expenses of police and other peace officers.
- 136. Expenses connected with administration of justice.
- 137. — In general.
- 138. — Civil proceedings.
- 139. — Criminal prosecutions.
- 140. Liabilities specially imposed by statute.

**VII. TORTS.**

- 141. Nature and grounds of liability.
- 142. Exercise of governmental powers in general.
- 143. Condition and use of public buildings, places, and property.
- 144. Construction and maintenance of public improvements and works.
- 145. Performance of duty imposed with consent or for benefit of county.
- 146. Acts of officers or agents.
- 147. Ratification or repudiation.
- 148. Injuries by mobs or other wrongdoers.
- 148.5. Failure to protect against domestic violence, sexual assault, etc.

**VIII. FISCAL MANAGEMENT, PUBLIC DEBT, AND SECURITIES.**

- 149. Power to incur indebtedness in general.
- 150. Limitation of amount of indebtedness.
  - (1). In general.
  - (2). Debts and expenditures subject to limitations.
  - (3). Computing or ascertaining limit.
- 151. Submission of question of expenditure to popular vote.
- 152. Contracts involving indebtedness or expenditures.
- 153. Borrowing money.
- 153.5. Limitation on use of funds or credit.
- 154. Aid to corporations and investments in stock.
  - (1). In general.
  - (2). Submission of question to popular vote.
- 154.5. Administration of finances in general.
- 155. Collection and custody of revenues.
- 156. Adjustment of accounts with state.

**VIII. FISCAL MANAGEMENT, PUBLIC DEBT, AND SECURITIES.(Cont'd)**

- 157. Adjustment of accounts with other counties, or with towns or school districts.
- 158. Disbursements in general.
- 159. Reports and statements as to finances.
- 160. General county funds.
- 161. Special funds.
- 162. Appropriations.
- 163. Warrants and certificates of indebtedness.
  - 163.1. — In general.
- 164. — Power to issue.
- 165. — Issuance, requisites, and validity.
- 166. — Construction and operation.
- 167. — Assignment and other transfer.
- 168. — Payment.
  - (1). In general.
  - (2). From general or special fund.
  - (3). Order of payment.
  - (4). Interest.
  - (5). Powers and duties of treasurer.
- 169. — Surrender for redemption, reissue, or funding.
- 170. — Remedies.
  - (1). In general.
  - (2). Limitations.
  - (3). Pleading.
  - (4). Evidence, trial, and judgment.
- 171. Bills and notes.
- 172. Power to issue bonds.
- 173. — In general.
  - 173.1. — Limitations on issue.
  - 173.2. — Aid to corporations.
- 174. — Public improvements.
- 175. — Refunding.
- 176. Proceedings preliminary to issue of bonds.
  - 177. — In general.
- 178. — Petition or assent of taxpayers or voters.
- 179. Conditions precedent to issue of bonds.
- 180. — In general.
- 181. — Provision for payment.
- 182. Sale or other disposition of bonds by county.
- 183. Issuance, requisites, and validity of bonds.
  - (1). In general.

**104. COUNTIES****VIII. FISCAL MANAGEMENT, PUBLIC DEBT, AND SECURITIES.(Cont'd)**

- (2). Form and contents of bonds.
- (3). Ratification and estoppel to deny validity.
- (4). Proceedings to determine validity.
- (5). Curative acts.
- 184. Construction and operation.
- 185. Registration of bonds.
- 186. Transfer of bonds, or coupons.
- 186.5. Sinking funds.
- 187. Payment of bonds and coupons.
- 188. Actions on bonds or coupons.

**IX. TAXATION.**

- 189. Taxation.
- 190. — In general.
- 190.1. — Power and duty to levy.
- 190.2. — Limitations.
- 191. — Levy for general county purposes.
- 192. — Levy for special purposes.
- 193. — Assessment.
- 194. — Collection.
- 195. Disposition of taxes and other revenue.

**X. TAXPAYERS' SUITS OR ACTIONS.**

- 196. Rights and remedies of taxpayers.
  - (.5). In general.
  - (1). Nature and grounds of action in general.
  - (2). Appeal from orders of county board.
  - (3). Grounds for injunction or appointment of receiver.
  - (4). Rights of action, defenses, and conditions precedent.
  - (5). Limitations and laches.
  - (6). Parties.
  - (7). Pleading and evidence.
  - (8). Trial, judgment, and review.
  - (9). Costs.

**XI. CLAIMS AGAINST COUNTY.**

- 197. Nature of claims required to be presented.
- 198. Interest.
- 199. Assignment.
- 200. Time for presentation.
- 201. Statement.

**XI. CLAIMS AGAINST COUNTY.(Cont'd)**

- 202. Verification and proof.
- 203. Presentation and filing.
- 204. Audit and allowance or disallowance.
  - (.5). In general.
  - (1). Nature and extent of power and duty to audit and allow claims in general.
  - (2). Reference to and approval of claims by auditor or other officer.
  - (3). Hearing.
  - (4). Decision.
  - (5). Compromise and arbitration.
- 205. Review of decision.
  - (.5). In general.
  - (1). Nature and form of remedy.
  - (2). Appellate jurisdiction.
  - (3). Right of review and decisions reviewable.
  - (4). Perfection of appeal and effect thereof.
  - (5). Review and determination in appellate tribunal.
- 206. Effect of allowance or disallowance.
  - (.5). In general.
  - (1). Conclusiveness and effect of adjudication in general.
  - (2). Reconsideration and second audit.
  - (3). Effect as to other remedies for collection.
- 207. Payment.
  - (1). In general.
  - (2). Recovery of payments.

**XII. ACTIONS.**

- 208. Capacity to sue or be sued in general.
- 209. Statutory provisions.
- 210. Rights of action.
- 211. Conditions precedent.
- 211.1. — In general.
- 213.5. — Notice, demand, or presentation of claim.
  - (1). In general.
  - (2). Service or presentation; timeliness.
  - (3). Excuses for, and relief from, delay or failure.
  - (4). Form and sufficiency.
  - (5). Waiver and estoppel.

**104. COUNTIES**

**XII. ACTIONS.**(Cont'd)

- 214. Defenses.
- 215. Jurisdiction and venue.
- 216. Time to sue and limitations.  
*See also LIMITATION OF ACTIONS.*
- 217. Authority to sue in name of county.
- 218. Parties.
- 219. Process.
- 220. Appearance and representation by attorney.
- 221. Attachment and garnishment.
- 222. Pleading.
- 223. Evidence.
- 224. Trial.
- 225. Judgment.
- 226. Execution and enforcement of judgment.
- 227. Appeal and error.
- 228. Costs.

**105. COURT COMMISSIONERS**

**SUBJECTS INCLUDED**

- Officers authorized to assist state courts in performance of part of their functions with subordinate judicial powers
- Appointment, qualification, tenure and removal of such officers
- Their jurisdiction and powers and proceedings before them in general
- Their rights, duties and liabilities

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Additional members of courts, commissioners appointed as or constituting auxiliary courts or parts of courts, see COURTS, JUDGES
- Admiralty, commissioners in, see ADMIRALTY
- Appellate courts, commissioners who write opinions, see COURTS, JUDGES
- Chancery, commissioners in, see EQUITY
- Federal court commissioners, see UNITED STATES MAGISTRATE JUDGES

Particular proceedings by or before commissioners, see BOUNDARIES, EMINENT DOMAIN and other specific topics

Reference of questions and issues to persons especially appointed, though denominated court commissioners, see REFERENCE

- 1. Creation and abolition of office, and appointment, qualification, and tenure.
- 2. Compensation and fees.
- 3. Powers, functions, and liabilities in general.
- 4. Civil jurisdiction and authority.
- 5. Procedure.
- 6. Liabilities on official bonds.

**106. COURTS**

**SUBJECTS INCLUDED**

- The judicial department of government
- Nature and scope of judicial power in general
- Establishment, organization and conduct of business of courts
- Ministerial officers attached to courts
- Jurisdiction and procedure peculiar to particular courts
- Concurrent and conflicting jurisdiction and comity between courts

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Administrative tribunals, see ADMINISTRATIVE LAW AND PROCEDURE, PUBLIC UTILITIES, LABOR AND EMPLOYMENT and other specific topics
- Attorneys as officers of court, and supervision thereof, see ATTORNEYS AND LEGAL SERVICES
- Contempt of court, see CONTEMPT
- Criminal prosecutions, jurisdiction and procedure, see CRIMINAL LAW and specific topics
- Federal courts, civil jurisdiction and procedure, see FEDERAL COURTS and FEDERAL CIVIL PROCEDURE
- Impeachments, courts for trial of, see PUBLIC EMPLOYMENT

## 106. COURTS

International courts and tribunals, see INTERNATIONAL LAW

Judges and officers of courts exercising judicial powers, and their official functions and acts, see JUDGES, CLERKS OF COURTS, COURT COMMISSIONERS and other specific topics

Jurisdiction as essential to validity of judgment, and particular modes of acquiring jurisdiction, see JUDGMENT, APPEARANCE, CREDITORS' REMEDIES, PROCESS, and other specific topics

Jury and court, respective functions, see TRIAL, CRIMINAL LAW and specific topics

Justices of the peace, see JUSTICES OF THE PEACE

Military courts or courts-martial, see ARMED SERVICES, MILITARY JUSTICE, MILITIA, WAR AND NATIONAL EMERGENCY

Particular classes of persons, species of property, etc., jurisdiction and proceedings, see INFANTS, PARTNERSHIP and other specific topics

Particular forms or causes of action and special proceedings other than actions, jurisdiction and procedure, see DIVORCE, EMINENT DOMAIN and other specific topics

Removal of cases from state courts to courts of United States, see REMOVAL OF CASES

Reports of judicial decisions, see REPORTS

Separation of powers among the judicial, legislative, and executive departments of government, see CONSTITUTIONAL LAW XX

Special jurisdiction, courts of and procedure therein, see ADMIRALTY, BANKRUPTCY, EQUITY, and other specific topics

State courts or boards of claims, see STATES

Tribal courts, see INDIANS ¶219

## I. NATURE, EXTENT, AND EXERCISE OF JURISDICTION IN GENERAL, ¶1-40.11.

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## II. ESTABLISHMENT, ORGANIZATION, AND PROCEDURE—Cont'd

(A) CREATION AND CONSTITUTION, ¶41-54.

(B) COURT OFFICERS, ¶55-58.

(C) DE FACTO COURTS, ¶59.

(D) UNAUTHORIZED OR ILLEGAL COURTS, ¶60.

(E) PLACES AND TIMES OF HOLDING COURT, ¶61-77.

(F) RULES OF COURT AND CONDUCT OF BUSINESS, ¶78-86.

(G) RULES OF DECISION, ¶87-99.

(H) EFFECT OF REVERSAL OR OVERRULING, ¶100.

(I) QUORUM OF JUDGES, ¶101.

(J) CONCURRENCE IN ADJUDICATION, ¶102.

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(D) TRIBAL COURTS AND OTHER COURTS, ¶530-539.

(E) TERRITORIAL COURTS AND OTHER COURTS, ¶540-549.

(F) DISTRICT OF COLUMBIA COURTS AND OTHER COURTS, ¶550.



**106. COURTS****I. NATURE, EXTENT, AND EXERCISE OF JURISDICTION IN GENERAL.****(A) IN GENERAL.**

1. In general; nature and source of judicial authority.
2. Grounds and essentials of jurisdiction.
3. Jurisdiction of cause of action.
4. — In general.
5. — Nature and grounds of action.
6. — Place of accrual of cause of action.
7. — Local or transitory actions.
8. — Actions under laws of other state.
9. — Actions under laws of foreign country.  
*See also INTERNATIONAL LAW V.*
10. Jurisdiction of the person in general.
11. — In general.
- 12.5. — Domicile or residence of party in general.
13. — Place where party is found or process served.
- 13.1. Actions by or against nonresidents, personal jurisdiction in; “long-arm” jurisdiction.
- 13.2. — In general.
- 13.3. — Factors considered in general.
  - (1). In general.
  - (2). Contacts with forum state in general.
  - (3). Nature, number, frequency, and extent of contacts and activities.
  - (4). Purpose, intent, and foreseeability; purposeful availment.
  - (5). Connection with litigation.
  - (6). — In general.
  - (7). — Unrelated contacts and activities; general jurisdiction.
  - (8). — Related contacts and activities; specific jurisdiction.
  - (9). Commercial contacts and activities; contracts and transactions.
  - (10). — In general.
  - (11). — Business contacts and activities; transacting or doing business.
  - (12). Internet use.
- 13.4. — Particular nonresident entities.
  - (1). In general.
  - (2). Associations and organizations.

**I. NATURE, EXTENT, AND EXERCISE OF JURISDICTION IN GENERAL.(Cont'd)**

- (3). Corporations and business organizations.
- (4). Unincorporated business organizations.
- (5). Limited liability companies.
- (6). Partnerships and joint ventures.
- (7). Non-profit corporations and organizations.
- 13.5. — Particular contexts and causes of action.  
*Domestic relations, see CHILD CUSTODY X, CHILD SUPPORT X, DIVORCE §62(5), PARENT AND CHILD II(C), and other specific topics and lines.*
  - (1). In general.
  - (2). Property disputes; wills, trusts, and estates.
  - (3). Contract disputes.
  - (4). Torts in general.
  - (5). Automobile accidents; nonresident motorists.
  - (6). Manufacture, distribution, and sale of products.
  - (7). — In general.
  - (8). — Defective, dangerous, or injurious products; products liability.
  - (9). Defamation.
  - (10). Fraud, racketeering, and deceptive practices.
  - (11). Professional services; malpractice.
  - (12). Investment, finance, and credit.
  - (13). Banks and banking.
  - (14). Insurers and insurance.
- 13.6. — Agents, representatives, and other third parties, contacts and activities of as basis for jurisdiction.
  - (1). In general.
  - (2). Particular cases.
  - (3). Jurisdiction of agents, representatives, or other third parties themselves.
  - (4). — In general.
  - (5). — Fiduciary duties in general; fiduciary shield.
  - (6). — Tortious or intentional conduct; fraud and breach of fiduciary duties.
  - (7). Conspiracy and co-conspirators.

## 106. COURTS

**I. NATURE, EXTENT, AND EXERCISE OF JURISDICTION IN GENERAL.**(Cont'd)

- (8). Shareholders, members, or other individual owners of entities.
- (9). Related or affiliated entities; parent and subsidiary.
- 13.7. — Change of residence; actions against former residents.
- 13.8. — Nonresident plaintiffs.
  - (1). In general.
  - (2). Actions between nonresidents.
- 16. Jurisdiction of property or other subject-matter involved.
- 17. — In general.
- 18. — Situation of real property.
- 19. — Situation of personal property.
- 20. Jurisdiction of remedy or relief.
- 21. Mode of acquiring or exercising jurisdiction in general.  
*See also APPEARANCE and PROCESS.*
- 22. Consent of parties as to jurisdiction.
- 23. — In general.
- 24. — Of cause of action or subject-matter.
- 25. — Of the person.
- 26. Scope and extent of jurisdiction in general.
  - (1). In general.
  - (2). Discretion of court in general.
  - (3). Abuse of discretion in general.
- 27. Ancillary and incidental jurisdiction.
- 28.5. Discretion as to exercise of jurisdiction.  
*Discretion as to location of forum, and doctrine of forum non conveniens, see I(B) below.*
  - (1). In general.
  - (2). Abstention.
- 29. Exercise of jurisdiction beyond territorial limits.
- 30. Loss or divestiture of jurisdiction.
- 31. Jurisdiction to be shown by record.
- 32. — In general.
- 32.3. — Allegations, pleadings, and affidavits.
- 32.5. — Jurisdiction of the person.
  - (1). In general.
  - (2). Allegations, pleadings, and affidavits.
- 33. — Special, limited, or inferior jurisdiction.
- 34. Presumptions and burden of proof as to jurisdiction.

**I. NATURE, EXTENT, AND EXERCISE OF JURISDICTION IN GENERAL.**(Cont'd)

- 35. — In general.
- 36. — Special, limited, or inferior jurisdiction.
- 37. Waiver of objections.
  - (1). In general.
  - (2). Time of making objection.
  - (3). Estoppel arising from submitting to or invoking jurisdiction.
- 38. Grounds for questioning jurisdiction.
- 39. Determination of questions of jurisdiction in general.
- 40. Acts and proceedings without jurisdiction.

**(B) LOCATION OF FORUM; FORUM NON CONVENIENS.**

- 40.1. In general.
- 40.2. Discretion in general.
- 40.3. Parties' choice of forum; forum-shopping.
- 40.4. Place of accrual of cause of action.
- 40.5. Residency of parties; state of incorporation.
- 40.6. Convenience of parties and witnesses; location of evidence.
- 40.7. Burden placed on court and public.
- 40.8. Conflict of laws.
- 40.9. Public and private interests; balancing interests.
- 40.10. Alternate forum.
  - (1). In general.
  - (2). Availability and adequacy.
  - (3). Amenability to process.
  - (4). Enforceability of judgment in alternate forum.
  - (5). Scope and effect of pending proceedings.
- 40.11. Proceedings.
  - (1). In general.
  - (2). Form and sufficiency of motion.
  - (3). Affidavits; evidence.
  - (4). Presumptions and burden of proof.
  - (5). Determination and disposition.
  - (6). — In general.
  - (7). — Conditions precedent.
  - (8). — Form and sufficiency of order.

**106. COURTS****I. NATURE, EXTENT, AND EXERCISE OF JURISDICTION IN GENERAL.**(Cont'd)

- (9). — Denial, dismissal, or transfer.

**II. ESTABLISHMENT, ORGANIZATION, AND PROCEDURE.****(A) CREATION AND CONSTITUTION.**

41. Creation and abolition in general.
42. Constitutional and statutory provisions.
  - (1). In general.
  - (2). Intermediate appellate courts.
  - (3). County courts and other local courts.
  - (4). Probate courts.
  - (5). Municipal, police, and other city courts.
  - (6). Criminal courts.
  - (7). Courts of equity.
  - (8). Temporary or special courts, boards, and commissions.
43. Powers of Legislature.
44. Powers of Congress.
45. Judicial departments, circuits, and districts.
46. Organization and incidents of existence.
47. — In general.
48. — Courts of record.
49. — Courts not of record.
50. Divisions and parts of courts.
51. Temporary courts and commissions.
52. Transfer or change of jurisdiction.
53. Reorganization.
54. Consolidation.

**(B) COURT OFFICERS.**

55. Ministerial officers in general.
56. Interpreters.
57. Stenographers.
  - (.5). In general.
  - (1). Appointment and duties.
  - (2). Compensation and fees.
58. Criers, bailiffs, and attendants.

**(C) DE FACTO COURTS.**

59. In general.

**(D) UNAUTHORIZED OR ILLEGAL COURTS.**

60. In general.

**(E) PLACES AND TIMES OF HOLDING COURT.**

61. Power to regulate places and times of holding court.
62. Constitutional and statutory provisions.
63. Terms in general and regular or stated terms.
64. Special or extraordinary terms.
  - (.5). In general.
  - (1). Definition.
  - (2). Power to hold or appoint in general.
  - (3). Constitutional and statutory provisions.
  - (4). Validity.
  - (5). Orders appointing special term.
  - (6). Jurisdiction and power at special term.
65. Duration of terms.
66. Adjournment of terms.
  - (1). In general.
  - (2). Order for adjournment and notice and record thereof.
  - (3). Reconvention of adjourned term.
  - (4). Nature of adjourned term.
  - (5). Duration of adjourned term.
  - (6). Adjournment of adjourned term.
- 66.1. Extension of terms.
67. Simultaneous terms of same court.
68. Continuance of proceeding after term.
69. Proceedings in vacation.
70. Designation or assignment of judges.
71. Attendance of officers.
72. Courthouses and courtrooms.
73. Accommodations and supplies.
74. Place for holding sessions.
75. Time for sessions.
76. Adjournment of sessions.
77. Failure to hold term or session.

**(F) RULES OF COURT AND CONDUCT OF BUSINESS.**

*Certainty, definiteness, vagueness, and overbreadth, see CONSTITUTIONAL LAW.*

78. Power to regulate procedure.
79. Constitutional and statutory provisions.
80. Matters subject to regulation.
  - (1). In general.
  - (2). Admissibility of evidence.

## 106. COURTS

II. ESTABLISHMENT, ORGANIZATION,  
AND PROCEDURE.(Cont'd)

- (3). Time for presenting or filing pleadings, motions, or exceptions.
- (4). Appeals.
- (5). Fees and costs.
- 81. Making and promulgation of rules.
- 82. Modification, amendment, suspension, or disregard of rules.
- 83. Rescission of rules.
- 84. Record and evidence of rules.
- 85. Operation and effect of rules.
  - (1). In general.
  - (2). Construction and application of rules in general.
  - (3). Construction and application of particular rules.
  - (4). Excuse for noncompliance.
- 86. Conduct of particular proceedings.
- (G) RULES OF DECISION.
- 87. Nature of judicial determination.
- 88. Previous decisions as controlling or as precedents.
- 89. — In general.  
*Attorney General opinions involving statutory interpretation, see STATUTES §1289.*
- 90. — Decisions of same court or co-ordinate court.
  - (1). In general.
  - (2). Number of judges concurring in opinion, and opinion by divided court.
  - (3). Constitutional questions.
  - (4). Construction and operation of statutes.
  - (5). Matters of form or practice.
  - (6). Erroneous or injudicious decisions.
  - (7). Decisions of co-ordinate courts of same state.
- 91. — Decisions of higher court or court of last resort.
  - (5). In general.
  - (1). Highest appellate court.
  - (2). Intermediate appellate court.
- 92. — Dicta.
- 93. — Rules of property.
  - (1). In general.
  - (2). Constitutional questions.

II. ESTABLISHMENT, ORGANIZATION,  
AND PROCEDURE.(Cont'd)

- (3). Construction and operation of statutes.
- (4). Erroneous decisions.
- 95. — Decisions of courts of other state.
  - (1). In general.
  - (2). Validity and construction of Constitutions and statutes of other states.
- 96. — Decisions of United States courts as authority in other United States courts.
  - (1). In general.
  - (3). Supreme Court decisions.
  - (4). Conclusiveness of decisions of Court of Appeals within its circuit.
  - (5). Decisions in other circuits.
  - (6). Construction of constitutions and statutes in general.
  - (7). Particular questions or subject matter.
- 97. — Decisions of United States courts as authority in state courts.
  - (1). In general.
  - (2). Validity of federal statutes.
  - (3). Validity of state statutes under federal Constitution.
  - (4). Validity of state statute under state Constitution.
  - (5). Construction of federal Constitution, statutes, and treaties.
  - (6). Construction of state Constitutions and statutes.
- 98. — Decisions of courts of other countries.
- 98.5. — Decisions of other courts as authority in tribal courts.
- 99. Previous decisions in same case as law of the case.
  - (1). In general.
  - (2). Rulings on pleadings.
  - (3). Jurisdiction, dismissal, nonsuit, and summary judgment, rulings relating to.
  - (4). Interim relief, rulings relating to.
  - (5). Trial or evidence, rulings relating to.
  - (6). Other particular matters, rulings relating to.

**106. COURTS****II. ESTABLISHMENT, ORGANIZATION,  
AND PROCEDURE.(Cont'd)**

- (7). Different courts or judges, rulings by.

**(H) EFFECT OF REVERSAL OR OVERRULING.**

100. In general.

- (1). In general; retroactive or prospective operation.  
(2). Effect on existing judgment.  
(3). Parties or interests affected by subsequent decision.

**(I) QUORUM OF JUDGES.**

101. In general.

**(J) CONCURRENCE IN ADJUDICATION.**

102. In general.

- (1). In general.  
(2). Opinion by divided court.

**(K) OPINIONS.**

103. In general.  
104. Necessity.  
105. Constitutional and statutory provisions.  
106. Preparation and filing.  
107. Operation and effect in general.  
108. As evidence of the law.

**(L) SYLLABI.**

109. In general.

**(M) RECORDS.**

110. In general.  
111. Necessity.  
112. What constitutes.  
113. Making and custody.  
114. Entries nunc pro tunc.  
115. Defects and omissions.  
116. Amendment and correction.  
(.5). In general.  
(1). Power to amend.  
(2). Authority of clerk.  
(3). Errors or omissions which may be corrected.  
(4). Time of amendment.  
(5). Notice and application, and proceedings thereon.

**II. ESTABLISHMENT, ORGANIZATION,  
AND PROCEDURE.(Cont'd)**

- (6). Operation and effect of amendment.

117. Operation and effect.

**III. COURTS OF GENERAL ORIGINAL  
JURISDICTION.****(A) GROUNDS OF JURISDICTION IN GENERAL.**

- 117.5. In general.  
118. Courts invested with general jurisdiction.  
119. Amount or value in controversy.  
119.1. — In general.  
120. — Requisite amount or value.  
121. — Matter in dispute, or amount or value claimed or involved.  
(1). In general.  
(2). Amount claimed or sum recoverable or in dispute.  
(3). Amount claimed or value of property.  
(4). Uniting separate demands or causes of action, and aggregate of claims by or against two or more parties.  
(5). Aggregate of principal and interest, costs, or attorney fees.  
(6). Original amount affected by part payment or reduction from other cause.  
(7). Amount as affected by set-off or counterclaim.  
(8). Fictitious or fraudulent demand.  
(9). Demand of exemplary or special damages.  
(10). Amount in controversy in actions on bonds.  
(11). Waiver of part of claim.  
122. — Allegations and prayers in pleadings.

**(B) COURTS OF PARTICULAR STATES.**

123. Alabama.  
123.1. Alaska.  
123.2. Arizona.  
124. Arkansas.  
125. California.  
126. Colorado.  
127. Connecticut.  
127.1. Delaware.

**106. COURTS****III. COURTS OF GENERAL ORIGINAL JURISDICTION.(Cont'd)**

- 128. Florida.
- 129. Georgia.
- 129.1. Hawaii.
- 130. Idaho.
- 131. Illinois.
- 132. Indiana.
- 133. Iowa.
- 134. Kansas.
- 135. Kentucky.
- 136. Louisiana.
- 137. Maine.
- 138. Maryland.
- 139. Massachusetts.
- 139.1. Michigan.
- 140. Minnesota.
- 141. Mississippi.
- 142. Missouri.
- 143. Montana.
- 144. Nebraska.
- 145. Nevada.
- 146. New Hampshire.
- 147. New Jersey.
- 147.1. New Mexico.
- 148. New York.
- 149. North Carolina.
- 149.1. North Dakota.
- 150. Ohio.
- 150.1. Oklahoma.
- 150.2. Oregon.
- 151. Pennsylvania.
- 152. Rhode Island.
- 153. South Carolina.
- 153.1. South Dakota.
- 154. Tennessee.
- 155. Texas.
- 156. Utah.
- 156.1. Vermont.
- 157. Virginia.
- 157.1. Washington.
- 157.2. West Virginia.
- 158. Wisconsin.
- 158.1. Wyoming.

**IV. COURTS OF LIMITED OR INFERIOR JURISDICTION.**

- 159. Nature and scope of limitations in general.

**IV. COURTS OF LIMITED OR INFERIOR JURISDICTION.(Cont'd)**

- 160. Constitutional and statutory provisions.
- 161. Courts limited as to jurisdiction.
- 162. Limitations as to subject-matter.
- 162.1. — In general.
- 163. — Title to real property.
- 164. — Allegations in pleadings.
- 165. Limitations as to parties.
- 167. Limitations as to amount or value in controversy.
- 168. — In general.
- 169. — Amount or value claimed or involved.
  - (.5). In general.
  - (1). Amount claimed or sum recoverable or in dispute.
  - (2). Amount claimed or value of property.
  - (3). Aggregate of claims in general.
  - (4). Aggregate of principal and interest, attorney fees, or costs.
  - (5). Amount as affected by set-off or counterclaim.
  - (6). Demand of exemplary or special damages.
  - (7). Amount in controversy in actions on bonds.
  - (8). Waiver of part of claim, and splitting demands.
- 170. — Allegations and prayers in pleadings.
- 171. Territorial limitations.
- 172. — In general.
- 173. — Execution of process.
- 174. Particular courts of special civil jurisdiction.
  - 174.1. — In general.
- 175. — Jurisdiction.
- 176. — Procedure.
- 176.5. — Review of proceedings.
- 177. Civil jurisdiction of criminal courts.
- 177.1. — In general.
- 178. — Jurisdiction.
- 179. Particular courts of inferior civil jurisdiction.
  - 179.1. — In general.
- 180. — Jurisdiction.
- 181. — Procedure.
- 182. County courts and other local courts.

**106. COURTS****IV. COURTS OF LIMITED OR INFERIOR JURISDICTION.(Cont'd)**

- 182.1. — In general.
- 183. — Jurisdiction.
- 184. — Procedure.
- 185. — Review of proceedings.
- 186. Municipal courts.
- 186.1. — In general.
- 187. — Nature and incidents of municipal courts in general.
- 188. — Jurisdiction.
  - (1). In general.
  - (2). Nature of subject-matter in general.
  - (3). Equitable jurisdiction and relief.
  - (4). Actions on contracts.
  - (5). Actions on bonds.
  - (6). Actions for torts.
  - (7). Actions for recovery of money.
  - (8). Actions for recovery of rent or removal of tenant.
  - (9). Replevin.
  - (10). Foreclosure or enforcement of liens or mortgages.
  - (11). Actions to restore lost instruments.
  - (12). Actions for reformation of instruments.
  - (13). Prohibition.
  - (14). Actions on judgments.
  - (15). Summary proceedings.
- 189. — Procedure.
  - (1). In general.
  - (2). Place of holding court.
  - (3). Venue and change of venue.
  - (3.5). Parties.
  - (4). Process.
  - (5). Appearance.
  - (6). Attachment and replevin.
  - (6.5). Counterclaim.
  - (7). Pleading.
  - (8). Evidence and depositions.
  - (9). Dismissal and nonsuit.
  - (10). Continuance and adjournment.
  - (11). Submission of cause on agreed statement.
  - (11.5). Trial in general.
  - (12). Trial without jury.
  - (13). Direction of verdict.

**IV. COURTS OF LIMITED OR INFERIOR JURISDICTION.(Cont'd)**

- (14). New trial.
- (15). Judgment.
- (16). Records and dockets.
- 190. — Review of proceedings.
  - (.5). In general.
  - (1). Nature and form of remedy.
  - (2). Decisions reviewable.
  - (3). Right of review.
  - (3.5). Presentation of grounds of review.
  - (4). Requisites and proceedings for transfer of cause.
  - (5). Supersedeas or stay of proceedings.
  - (6). Return, statement, record or transcript, and assignment of errors.
  - (7). Briefs.
  - (8). Review.
  - (9). Determination and disposition of cause.
  - (10). Liabilities on bonds and undertakings.
- 191. District courts in cities, and other local district courts.
- 191.1. — In general.
- 192. — Jurisdiction.
- 193. — Procedure.
- 194. — Review of proceedings.
- 195. Specially created courts and tribunals.
- 195.1. — In general.
- 196. — Jurisdiction.
- 197. — Procedure.

**V. COURTS OF PROBATE JURISDICTION.**

- 198. Nature and scope of jurisdiction in general.
- 199. Constitutional and statutory provisions.
- 200. Courts invested with probate jurisdiction.
- 200.5. Equitable powers in general.
- 200.7. Determination of title to property.
- 201. Ancillary and incidental jurisdiction.
- 202. Procedure in general.
  - (1). In general.
  - (2). Pleading.
  - (3). Trial.
  - (4). Judgment, orders, and records.

**106. COURTS****V. COURTS OF PROBATE  
JURISDICTION.(Cont'd)**

- (5). Review and vacation of proceedings.

**VI. COURTS OF APPELLATE JURISDICTION.****(A) GROUNDS OF JURISDICTION IN GENERAL.**

203. Constitutional and statutory provisions.  
 204. Supervisory jurisdiction.  
 205. Jurisdiction ancillary or incidental to appellate powers.  
 206. Original jurisdiction in general.  
     (.1). Alabama.  
     (.2). Alaska.  
     (.3). Arizona.  
     (.4). Arkansas.  
     (1). California.  
     (2). Colorado.  
     (2.1). Connecticut.  
     (2.2). Delaware.  
     (2.3). Florida.  
     (2.4). Georgia.  
     (2.5). Hawaii.  
     (3). Idaho.  
     (4). Illinois.  
     (4.1). Indiana.  
     (5). Iowa.  
     (6). Kansas.  
     (6.1). Kentucky.  
     (7). Louisiana.  
     (7.1). Maine.  
     (7.2). Maryland.  
     (8). Massachusetts.  
     (8.1). Michigan.  
     (8.2). Minnesota.  
     (8.3). Mississippi.  
     (9). Missouri.  
     (10). Montana.  
     (11). Nebraska.  
     (11.1). Nevada.  
     (12). New Hampshire.  
     (12.1). New Jersey.  
     (12.2). New Mexico.  
     (13). New York.  
     (14). North Carolina.  
     (15). North Dakota.  
     (15.1). Ohio.  
     (15.2). Oklahoma.  
     (15.3). Oregon.

**VI. COURTS OF APPELLATE  
JURISDICTION.(Cont'd)**

- (16). Pennsylvania.  
 (16.1). Rhode Island.  
 (17). South Carolina.  
 (17.1). South Dakota.  
 (17.2). Tennessee.  
 (17.3). Texas.  
 (17.4). Utah.  
 (17.5). Vermont.  
 (17.6). Virginia.  
 (18). Washington.  
 (18.1). West Virginia.  
 (19). Wisconsin.  
 (20). Wyoming.  
 207. Issuance of prerogative or remedial writs.  
 207.1. — In general.  
 207.2. — Certiorari.  
 207.3. — Injunction.  
 207.4. — Mandamus.  
     (.5). In general.  
     (1). Jurisdiction in general; subjects and purposes of relief.  
     (1.1). — In general.  
     (2). — Courts, judges, and judicial officers, acts and proceedings of.  
     (3). — Public officers, boards, and municipalities, acts and proceedings of.  
 207.5. — Prohibition.  
 207.6. — Quo warranto.  
 208. Questions submitted by Legislature or Governor or other officer.  
 209. Procedure in general.  
     (1). In general.  
     (2). In issuance of writs.  
**(B) COURTS OF PARTICULAR STATES.**  
 210. Alabama.  
 210.1. Alaska.  
 210.2. Arizona.  
 211. Arkansas.  
 212. California.  
 213. Colorado.  
     (.5). In general.  
     (1). Appellate jurisdiction of Supreme Court in general.  
     (1.1). — In general.



**106. COURTS****VI. COURTS OF APPELLATE JURISDICTION.(Cont'd)**

- (2). — Review of decisions of Court of Appeals in general.
- (3). — Review of decisions of Court of Appeals as contrary to previous decisions of Supreme Court.
- (4). — Review of decisions of county courts.
- (5). Appellate jurisdiction of Court of Appeals in general.
- (6). Appellate jurisdiction of cases involving special case or great public question.
- (7). Appellate jurisdiction of cases involving constitutional questions.
- (8). Appellate jurisdiction of cases relating to freehold or franchise.
- (9). Appellate jurisdiction dependent on amount or value in controversy.
- 214. Connecticut.
- 215. Delaware.
- 216. Florida.
- 217. Georgia.
  - (1). In general.
  - (2). Appellate jurisdiction of Supreme Court in general.
  - (3). Appellate jurisdiction of Court of Appeals in general.
  - (4). Courts subject to review.
  - (5). Actions and proceedings reviewable.
  - (5.1). — In general.
  - (6). — Suits in equity.
  - (7). — Actions at law.
  - (8). — Determination of character of action.
  - (9). — Change in character.
  - (10). Certification of questions by Court of Appeals to Supreme Court.
  - (10.1). — In general.
  - (11). — Questions previously determined.
  - (12). — Questions of fact or of law and fact.
  - (13). — Form and sufficiency of questions.

**VI. COURTS OF APPELLATE JURISDICTION.(Cont'd)**

- (14). Transfer of cause.
- (15). Appellate jurisdiction in cases involving constitutional questions.
- (15.1). — In general.
- (16). — In criminal prosecutions.
- (17). — Time of raising question.
- (18). — Necessity and sufficiency of raising question.
- (19). Appellate jurisdiction of cases involving title to land.
- (20). Appellate jurisdiction in cases involving validity and construction of wills.
- (21). Appellate jurisdiction in cases involving extraordinary remedies.
- 217.1. Hawaii.
- 218. Idaho.
- 219. Illinois.
  - 219.1. — Supreme Court, appellate jurisdiction in general.
    - (1). In general.
    - (2). Appeals from Appellate Court.
    - (3). Nature of proceeding or question in general.
    - (4). Eminent domain.
    - (5). Probate matters.
    - (6). Mandamus.
    - (7). Injunction.
    - (8). Transfers to Appellate Court.
  - 219.2. — Certificate of cases by Appellate Court to Supreme Court.
  - 219.3. — Appellate Court, appellate jurisdiction in general.
    - (1). In general.
    - (2). On appeal from municipal courts.
    - (3). On appeal from county courts.
    - (4). Nature of proceeding or question in general.
    - (5). Probate matters.
  - 219.4. — Circuit courts, appellate jurisdiction.
  - 219.5. — Cases in which state is directly interested.
  - 219.6. — Revenue cases.
    - (1). In general.
    - (2). Taxes in general.

## 106. COURTS

VI. COURTS OF APPELLATE  
JURISDICTION.(Cont'd)

- (3). Personal property taxes.
- (4). Special assessments.
- (5). School taxes.
- (6). Inheritance tax.
- (7). Retailers' occupation tax; franchise tax.
- 219.7. — Cases involving the interpretation and validity of the Constitution and statutes in general.
  - (1). In general.
  - (2). Persons who may raise question.
  - (3). Questions already decided.
  - (4). Sham or fraudulent questions; debatable questions.
  - (5). Necessity of raising question and ruling thereon.
  - (5.1). — In general.
  - (6). — Record showing presentation and ruling thereon.
  - (7). Necessity that constitutional question be primary inquiry; decision on other grounds.
  - (8). Constitutional questions first raised in Appellate Court.
  - (9). Waiver of constitutional question by taking appeal to Appellate Court.
  - (10). Appellate Court's lack of authority; determination of its authority.
  - (11). Construction of statutes.
  - (12). Federal statutes and Constitution; foreign statutes.
  - (13). When constitutional question presented.
  - (14). Unjust or erroneous decision; error in applying principles of constitutional law.
  - (15). Trial and procedure in general.
  - (16). Attacking judgment or decree.
  - (17). Mode and sufficiency of raising question.
  - (17.1). — In general.
  - (18). — Pleadings; mere assertion of constitutional question.
  - (19). Presumption of validity of statute in Appellate Court.
  - (20). Transfers.

VI. COURTS OF APPELLATE  
JURISDICTION.(Cont'd)

- 219.8. — Particular constitutional provisions and statutes.
  - (1). In general.
  - (2). Vested rights, obligations of contracts, equal protection of law, and due process of law.
  - (3). Right to trial by jury.
  - (4). Full Faith and Credit Clause of Federal Constitution.
  - (5). Contempt proceedings.
  - (6). Divorce.
  - (7). Eminent domain; taking without just compensation.
  - (8). Injunction.
  - (9). Mandamus.
  - (10). Municipal Court Act, cases arising under.
  - (11). Schools.
  - (12). Stockholders of defunct banks, suits to enforce liability of.
  - (13). Taxation; assessments.
  - (14). Workers' compensation.
  - (15). Criminal prosecutions.
  - (15.1). — In general.
  - (16). — Misdemeanor cases.
  - (17). Unreasonable searches and seizures.
- 219.9. — Cases involving the interpretation and validity of ordinances.
  - (1). In general.
  - (2). What constitutes an ordinance.
  - (3). Zoning ordinances; building permits.
  - (4). Construction of ordinances.
  - (5). Mode and sufficiency of questioning validity.
  - (5.1). — In general.
  - (6). — Certification by trial judge.
  - (7). Prosecutions for violating ordinances.
- 219.10. — Cases involving franchise or right to hold office.
  - (1). In general.
  - (2). When franchise involved.
  - (3). Licenses.
  - (4). Elective franchise.
  - (5). Corporate franchise.
  - (6). Franchise to use public property.

**106. COURTS****VI. COURTS OF APPELLATE  
JURISDICTION.(Cont'd)**

- (7). Existence of municipal corporations in general; legality of organization.
- (8). Title to public office.
- 219.11. — Cases involving freehold in general.
  - (1). In general.
  - (2). What constitutes freehold; when freehold involved.
  - (3). Freehold located outside state.
  - (4). Decree not affecting freehold.
  - (5). Interlocutory orders in cases involving freehold.
  - (6). Necessity that freehold be directly involved.
  - (7). Gaining or losing freehold.
  - (7.1). — In general.
  - (8). — Title put in issue by pleadings.
  - (9). — Freehold not necessarily lost.
  - (10). Right to do that which will entitle party to freehold.
  - (11). Assignment of errors.
  - (12). When freehold was involved in original suit but not on appeal.
  - (13). Waiver by appeal to Appellate Court.
  - (14). Transfers.
- 219.12. — Particular cases involving freehold.
  - (1). In general.
  - (2). Boundaries.
  - (3). Corporations.
  - (4). Divorce; separate maintenance.
  - (5). Dower.
  - (6). Eminent domain.
  - (7). Execution; attachment; judicial sale.
  - (8). Forcible entry and detainer.
  - (9). Leases and rents.
  - (10). Liens; mechanic's liens.
  - (11). Easements, franchises or rights of way.
    - (11.1). — In general.
  - (12). — Drainage; waters.
  - (13). — Public utilities.
  - (14). Ejectment.

**VI. COURTS OF APPELLATE  
JURISDICTION.(Cont'd)**

- (15). Fraudulent conveyances.
- (16). Highways and streets; dedication.
- (16.1). — In general.
- (17). — Obstruction of highway or street.
- (18). Homesteads.
- (19). Mineral rights.
- (20). Mortgage foreclosure.
- (20.1). — In general.
- (21). — Redemption.
- (22). — Suits to have deeds declared mortgages.
- (23). Partition.
  - (23.1). — In general.
- (24). — Freehold not involved in general.
- (25). — Questions of practice and procedure; costs.
- (26). Partnership.
- (27). Probate matters in general.
  - (27.1). — In general.
- (28). — Wills in general.
- (29). — Construction of wills.
- (30). Quieting title; removal of cloud on title.
- (31). Restrictive covenants; building restrictions.
- (32). Specific performance.
- (33). Tax proceedings.
- (34). Transfer of realty.
  - (34.1). — In general.
- (35). — Setting aside transfer, cancellation or reformation of deeds.
- (36). Trespass.
- (37). Trusts.
- 219.13. — Amount or value in controversy, appellate jurisdiction dependent on.
  - (1). In general.
  - (2). Requisite amount or value.
  - (3). Matters in dispute and amount or value claimed.
  - (4). Allegations and prayers in pleadings.
  - (5). Evidence.
- 220. Indiana.

**106. COURTS****VI. COURTS OF APPELLATE JURISDICTION.(Cont'd)**

- (1). Appellate jurisdiction of Supreme Court in general.
- (2). Appellate jurisdiction of Court of Appeals in general.
- (2.5). Appellate jurisdiction of circuit courts.
- (2.7). Transfer in general.
- (3). Transfer of causes where opinion of Court of Appeals contravenes ruling of Supreme Court or announces erroneous rule of law.
- (4). Transfer of causes where Court of Appeals is convinced that rule established by Supreme Court is erroneous.
- (5). Transfer of causes to Supreme Court where Court of Appeals is divided.
- (6). Reservation of questions of law for Supreme Court.
- (7). Appellate jurisdiction of cases involving constitutional questions.
- (7.1). — In general.
- (8). — Presentation of questions.
- (9). Appellate jurisdiction of cases involving construction of statutes.
- (10). Appellate jurisdiction of suits in equity.
- (11). Appellate jurisdiction of suits for recovery of money only.
- (12). Appellate jurisdiction of cases involving franchise.
- (13). Appellate jurisdiction of cases involving title to real estate.
- (14). Appellate jurisdiction dependent on amount or value in controversy.

221. Iowa.

222. Kansas.

- (.5). In general.
- (1). Appellate jurisdiction of Supreme Court in general.
- (2). Appellate jurisdiction of Court of Appeals in general.
- (3). Appellate jurisdiction of cases involving constitutional questions.
- (4). Appellate jurisdiction of cases involving title to land.

**VI. COURTS OF APPELLATE JURISDICTION.(Cont'd)**

- (5). Appellate jurisdiction dependent on amount or value in controversy.

223. Kentucky.

- (.5). Appellate jurisdiction of Supreme Court in general.
- (1). Appellate jurisdiction of Court of Appeals in general.
- (2). Appellate jurisdiction of Superior Court in general.
- (3). Appellate jurisdiction of cases involving constitutional questions.
- (4). Appellate jurisdiction of cases relating to revenue.
- (5). Appellate jurisdiction of cases involving title to real estate.
- (6). Appellate jurisdiction dependent on amount or value in controversy.

224. Louisiana.

- (1). In general.
- (2). Appellate jurisdiction of Supreme Court in general.
- (3). Appellate jurisdiction of Court of Appeals in general.
- (4). Certification of cases involving questions of law.
- (5). Appellate jurisdiction of cases where there is a fund in court for distribution.
- (6). Appellate jurisdiction of cases involving constitutional questions.
- (7). Appellate jurisdiction of cases involving legality of tax, toll, impost, fine or penalty.
- (8). Appellate jurisdiction of cases involving title to land.
- (9). Appellate jurisdiction dependent on amount or value in controversy.
- (9.1). — In general.
- (10). — Requisite amount or value.
- (11). — Matter in dispute and amount or value claimed.
- (12). — Evidence.

225. Maine.

226. Maryland.

227. Massachusetts.

228. Michigan.

**106. COURTS****VI. COURTS OF APPELLATE  
JURISDICTION.(Cont'd)**

- 229. Minnesota.
- 230. Mississippi.
- 231. Missouri.
  - (1). Appellate jurisdiction of Supreme Court in general.
  - (2). Appellate jurisdiction of Courts of Appeals in general.
  - (3). Appellate jurisdiction of circuit courts and courts of common pleas.
  - (4). Certifying or transferring to Supreme Court cases involving conflict with previous decisions.
  - (5). Appellate jurisdiction dependent on character of parties.
  - (6). Appellate jurisdiction of cases involving constitutional questions.
  - (6.1). — In general.
  - (7). — Distribution of governmental powers.
  - (8). — Vested rights, obligations of contracts, equal protection of laws, and due process of law.
  - (9). — Retroactive effect of statutes.
  - (10). — Time when statute took effect.
  - (11). — Eminent domain.
  - (12). — Uniformity of taxation.
  - (13). — Right to trial by jury.
  - (14). — Number of jurors concurring in verdict.
  - (15). — Public lands.
  - (16). — Trial and procedure.
  - (17). — City charters and ordinances.
  - (18). — In criminal prosecutions.
  - (19). — Questions already decided.
  - (20). — Sham or fraudulent questions.
  - (21). — Statutes of or authority exercised under United States.
  - (22). — Necessity of raising question.
  - (23). — Mode and sufficiency of raising question.
  - (24). Appellate jurisdiction of cases involving title to office.

**VI. COURTS OF APPELLATE  
JURISDICTION.(Cont'd)**

- (25). Appellate jurisdiction of cases involving title to land.
- (25.1). — In general.
- (26). — Suits to subject real estate to payment of debts in general.
- (27). — Proceedings to set aside fraudulent conveyances.
- (28). — Proceedings relating to executions.
- (29). — Actions to recover purchase price of land.
- (30). — Suits for specific performance.
- (31). — Actions for reformation of instruments.
- (32). — Suits to set aside judgment.
- (33). — Actions for trespass.
- (34). — Suits for partition.
- (35). — Suits relating to trusts.
- (36). — Suits for waste.
- (37). — Suits relating to easements, franchises, or rights of way.
- (38). — Condemnation proceedings.
- (39). — Suits relating to highways.
- (40). — Suits relating to dower and curtesy.
- (41). — Suits relating to homesteads.
- (42). — Actions for ejectment.
- (43). — Actions for replevin.
- (44). — Suits relating to deeds of trust or mortgages.
- (45). — Suits to enforce mechanics' liens.
- (46). — Tax proceedings.
- (47). — Suits relating to wills and devises.
- (48). Appellate jurisdiction of cases involving revenue.
- (49). Appellate jurisdiction dependent on amount or value in controversy.
- (49.1). — In general.
- (50). — Requisite amount or value.
- (51). — Matter in dispute and amount or value claimed.

**106. COURTS****VI. COURTS OF APPELLATE JURISDICTION.(Cont'd)**

- (52). — Allegations and prayers in pleadings.
232. Montana.
233. Nebraska.
234. Nevada.
235. New Hampshire.
236. New Jersey.
- 236.1. New Mexico.
237. New York.
- (1). Appellate jurisdiction of Court of Appeals in general.
- (1.1). — In general.
- (2). — Certificate of cases by Supreme Court.
- (3). Appellate jurisdiction of Supreme Court in general.
- (3.1). — In general.
- (4). — Appeals from city or district courts.
- (5). Appellate jurisdiction of cases involving title to land.
- (6). Appellate jurisdiction dependent on amount or value in controversy.
- (7). Appellate jurisdiction of court of common pleas.
238. North Carolina.
239. North Dakota.
240. Ohio.
- 240.1. Oklahoma.
241. Oregon.
242. Pennsylvania.
- (1). Appellate jurisdiction in general.
- (2). Supreme Court in general.
- (3). Superior Court in general.
- (4). Amount in controversy.
243. Rhode Island.
244. South Carolina.
245. South Dakota.
246. Tennessee.
247. Texas.
- (1). Appellate jurisdiction of Supreme Court in general.
- (2). Appellate jurisdiction of Courts of Civil and Criminal Appeals in general.
- (3). Appellate jurisdiction of district court in general.

**VI. COURTS OF APPELLATE JURISDICTION.(Cont'd)**

- (4). Appellate jurisdiction of county court in general.
- (5). Certificate of questions by Court of Civil Appeals to Supreme Court in general.
- (6). Certificate of dissent from Court of Civil Appeals to Supreme Court.
- (7). Review by or certificate to Supreme Court by Court of Civil Appeals of questions where its decision conflicts with or overrules that of another Court of Civil Appeals or that of the Supreme Court.
- (8). Appellate jurisdiction of cases involving Constitution or statutes.
- (9). Appellate jurisdiction of cases relating to revenue.
- (10). Appellate jurisdiction of cases involving boundaries or title to land.
- (11). Appellate jurisdiction dependent on amount or value in controversy.
248. Utah.
249. Vermont.
250. Virginia.
251. Washington.
252. West Virginia.
253. Wisconsin.
254. Wyoming.

**VII. CONCURRENT AND CONFLICTING JURISDICTION.****(A) COURTS OF SAME STATE.****1. IN GENERAL.**

472. Exclusive or concurrent jurisdiction.
- 472.1. — In general.
- 472.2. — Appellate or Supreme Courts.
- 472.3. — County courts.
- 472.4. — Probate courts.
- (1). In general.
- (2). Decedents' estates, administration of.
- (2.1). — In general.
- (3). — Assets and collection thereof.

**106. COURTS****VII. CONCURRENT AND CONFLICTING JURISDICTION.(Cont'd)**

- (4). — Claims and proceedings against estates and representatives.
- (5). — Accounting, distribution, and settlement.
- (6). Wills.
- (7). Trusts.
- (8). Guardianship; infants and incompetents.
- 472.5. — Common pleas.
- 472.6. — Municipal or other city courts.
- 472.7. — Justices of the peace.
- 472.8. — Actions to enforce mechanics' liens.
- 473. Election of tribunal.
- 474. Priority of jurisdiction.
- 475. Pendency and scope of prior proceeding.
  - (1). In general.
  - (2). Probate proceedings, administration, distribution, and settlement of estates.
  - (4). Trusts and trustees.
  - (5). Receivers and receiverships.
  - (6). Guardianship and estates of incompetent persons.
  - (7). Assignments for benefit of creditors, and creditors' suits.
  - (8). Condemnation proceedings.
  - (9). Determination of water rights.
  - (10). Enforcement of liens and mortgages.
  - (11). Proceedings for partition.
  - (12). Judicial sales.
  - (13). Injunctions.
  - (14). Proceedings for relief against erroneous taxation.
  - (15). Suits for divorce.
- 476. Assumption and exercise of conflicting jurisdiction in general.
- 477. Prisoners under arrest, commitment, or sentence.  
*For later cases concerning Detainers, see EXTRADITION AND DETAINERS.*
- 478. Property in custody of the law.
- 479. Suspension of proceedings.
- 480. Injunction or prohibition against proceedings.
  - (1). In general.

**VII. CONCURRENT AND CONFLICTING JURISDICTION.(Cont'd)**

- (2). Enjoining enforcement of judgment.
- (3). Enjoining enforcement of execution.
- 481. Vacating or annulling decisions.
- 2. TRANSFER OF CAUSES.**
- 483. In general.
- 484. Courts from and to which transfer may be made.
- 485. Causes which may be transferred.
- 486. Grounds.
- 487. Proceedings.
  - (1). In general.
  - (2). On whose application cause removed.
  - (3). Time of making application for transfer.
  - (4). Demand for transfer.
  - (5). Petition for removal.
  - (6). Undertaking to secure removal.
  - (7). Order for removal.
  - (8). Certificate of record to other court.
  - (9). Stipulations for transfer.
  - (10). Effect of application for transfer.
- 488. Effect of transfer and proceedings had thereafter.
  - (1). In general.
  - (2). Pleading.
  - (3). Improper transfer.
  - (4). Retransfer or remand of cause.
- (B) STATE COURTS AND UNITED STATES COURTS.**  
*Territorial courts and other courts, see COURTS ¶540. District of Columbia local courts and other courts, see COURTS ¶550.*
- 489. Exclusive or concurrent jurisdiction.
  - (1). In general.
  - (2). Suits involving validity or construction of state statutes.
  - (3). Suits relating to inventions or patent rights.
  - (4). Suits relating to literary property.
  - (5). Suits relating to public lands.
  - (6). Suits for penalties.
  - (7). Suits relating to maritime contracts and liens.
  - (8). Suits involving anti-trust law.

**106. COURTS****VII. CONCURRENT AND CONFLICTING JURISDICTION.(Cont'd)**

- (9). Suits brought under interstate commerce act.
- (9.5). Suits under employers' liability act.
- (10). Suits by or against corporations.
- (11). Suits by or against national banks.
- (12). Condemnation proceedings.
- (13). Suits relating to wills, probate, and administrations of estates.
- (14). Suits on bonds.
- (15). Actions affecting consuls and ambassadors.
- (16). Suits against United States or officers thereof.
- (17). Suits by state against citizens of other state.
- 490. Comity in general.
- 491. Election of tribunal.
- 492. Priority of jurisdiction.
- 493. Pendency and scope of prior proceeding.
  - (1). In general.
  - (2). Scope and effect of proceedings pending in federal court.
  - (3). Scope and effect of proceedings pending in state court.
- 494. Assumption and exercise of conflicting jurisdiction in general.
- 495. Prisoners under arrest, commitment, or sentence.  
*For later cases concerning Detainers, see EXTRADITION AND DETAINERS.*
- 496. Property in custody of the law.
- 497. — In general.
- 498. — Actual or constructive possession.
- 499. — Remedies against officers.
- 500. — Possession of receiver.
- 501. — Actions against receivers.
- 502. — Proceedings in admiralty.
- 503. — Seizures and proceedings for forfeiture.
- 504. — Assignments for benefit of creditors, and insolvency and bankruptcy proceedings.
- 505. — Administration of decedents' estates.
- 506. Suspension of proceedings.
- 507. Injunction by state court against proceedings in United States court.

**VII. CONCURRENT AND CONFLICTING JURISDICTION.(Cont'd)**

- 508. Injunction by United States court against proceedings in state court.
  - (1). In general.
  - (2). Restraining particular proceedings.
  - (2.1). — In general.
  - (3). — Enforcement of judgment or sale under execution.
  - (4). — Restraining acts of receivers of state courts.
  - (5). — Condemnation proceedings.
  - (6). — Assessment or collection of taxes.
  - (7). — Criminal proceedings.
  - (8). — Restraining proceedings after removal of cause to federal court.
- 509.1. Federal-court review of state-court decisions; Rooker-Feldman doctrine.
- 509.2. — In general.
- 509.3. — Particular cases and contexts.
  - (1). In general.
  - (2). Constitutional questions, civil rights, and discrimination in general.
  - (3). Labor and employment.
  - (4). Prisoners and inmates.
  - (5). Fraud.
  - (6). Debtor and creditor; bankruptcy; mortgages, liens, and security interests.
  - (7). Regulation of attorneys.
- 509.4. — United States Supreme Court, exclusive federal jurisdiction of.
- 509.5. State-court review of federal-court decisions.
- (C) COURTS OF DIFFERENT STATES OR COUNTRIES.**
- 510. Exclusive or concurrent jurisdiction.
- 511. Comity between courts of different states.
- 512. Comity between courts of different countries.
- 513. Election of tribunal.
- 514. Pendency and scope of prior proceeding.  
*For later cases concerning Detainers, see EXTRADITION AND DETAINERS.*
- 515. Suspension of proceedings.



**106. COURTS**

**VII. CONCURRENT AND CONFLICTING JURISDICTION.**(Cont'd)

- 516. Injunction against proceedings.
- 517. Annulling decisions.
- 517.5. Certification of questions.

**(D) TRIBAL COURTS AND OTHER COURTS.**

- 530. In general.

**(E) TERRITORIAL COURTS AND OTHER COURTS.**

- 540. In general.

**(F) DISTRICT OF COLUMBIA COURTS AND OTHER COURTS.**

*U.S. District Court for the District of Columbia and U.S. Court of Appeals for the District of Columbia Circuit, see VII(B), FEDERAL COURTS XIX.*

- 550. In general.

- 6. Persons liable.
- 7. Jurisdiction and venue.
- 8. Time to sue, and limitations.
- 9. Parties.
- 10. Process and appearance.
- 11. Pleading.
- 11.1. — In general.
- 12. — Declaration.
- 13. — Plea, replication, and subsequent pleadings.
- 14. — Issues, proof, and variance.
- 15. Evidence.
- 16. Damages.
- 17. Trial.
- 18. Judgment.

**107. COVENANT, ACTION OF**

**SUBJECTS INCLUDED**

- Actions of covenant, as distinguished from other forms of action
- Nature and scope of the remedy in general
- Grounds of such actions and defenses thereto, and by and against whom they may be maintained
- Proceedings therein

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Covenants and particular classes of promises in writing under seal on which the action may be maintained, see COVENANTS, BONDS, REAL PROPERTY CONVEYANCES, and other specific topics
- Election between remedies, see ELECTION OF REMEDIES
- Forms of action, distinctions between, see ACTION
- 1. Nature and scope of remedy.
- 2. Statutory provisions.
- 3. Grounds.
- 4. Defenses.
- 5. Persons entitled to sue.

**108. COVENANTS**

**SUBJECTS INCLUDED**

- Promises under seal in general, and more particularly such promises relating to the title, possession or use of real property
- Their nature, requisites, validity, incidents, construction, operation and effect
- What constitutes breach of covenant, and actions therefor

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Actions of covenant, see COVENANT, ACTION OF
- Common interest communities, see COMMON INTEREST COMMUNITIES
- Compelling performance of covenants, see SPECIFIC PERFORMANCE
- Conditions, provisos, etc., see REAL PROPERTY CONVEYANCES, CONTRACTS, and other specific topics
- Estoppel, operation of covenants as, especially as to after-acquired title, see ESTOPPEL
- Injunction against breach of covenants, see INJUNCTION
- Instruments containing covenants, requisites, validity and effect, and covenants incident to particular classes of instruments, see CONTRACTS, REAL PROPERTY CON-

**108. COVENANTS**

VEYANCES, LANDLORD AND TENANT, MORTGAGES AND DEEDS OF TRUST, and other specific topics

- I. REQUISITES AND VALIDITY, ¶1–20.
  - (A) EXPRESS COVENANTS, ¶1–7.
  - (B) IMPLIED COVENANTS, ¶8–20.
- II. CONSTRUCTION AND OPERATION, ¶21–84.
  - (A) COVENANTS IN GENERAL, ¶21–37.
  - (B) COVENANTS OF TITLE, ¶38–48.
  - (C) COVENANTS AS TO USE OF REAL PROPERTY, ¶49–52.
  - (D) COVENANTS RUNNING WITH THE LAND, ¶53–84.
- III. PERFORMANCE OR BREACH, ¶85–103.
- IV. ACTIONS FOR BREACH, ¶104–140.

**I. REQUISITES AND VALIDITY.****(A) EXPRESS COVENANTS.**

- 1. Nature and essentials in general.
- 2. Parties.
- 3. Formal requisites in general.
- 4. Statutory forms.
- 5. Forms of particular covenants.
- 6. Execution and delivery of instrument.
- 7. Acceptance of deed containing covenants on part of grantee.

**(B) IMPLIED COVENANTS.**

- 8. Nature and grounds in general.
- 9. Statutory provisions.
- 10. — In general.
- 11. — Abolition or restriction of implied covenants.
- 12. Words of conveyance.
- 13. — In general.
- 14. — Particular words.
- 15. Language of express covenants.
- 16. Recitals.
- 17. Description of premises.
- 18. Reservations.
- 19. Conditions.
- 20. Restrictions on use of property.

**II. CONSTRUCTION AND OPERATION.****(A) COVENANTS IN GENERAL.**

- 21. General rules of construction.

**II. CONSTRUCTION AND OPERATION.(Cont'd)**

- 22. What law governs.
- 24. Collateral and auxiliary covenants.
- 25. Alternative and disjunctive covenants.
- 26. Dependent or independent covenants.
- 27. Parties to covenants.
- 28. Joint or several covenants.
- 29. Persons entitled to enforce personal covenants.
- 30. Persons liable on personal covenants.
- 31. Subject-matter in general.
- 32. Limitations and exceptions in covenants.
- 33. Limitation to premises conveyed.
- 34. Limitation to estate conveyed.
- 35. Limitation by other covenants.
- 36. Duration of personal covenants.
- 37. Release or discharge from liability on personal covenants.

**(B) COVENANTS OF TITLE.**

- 38. Nature and operation in general.
- 39. Knowledge of parties as to defects in title or incumbrances.
- 40. Covenant of seisin.
- 41. Covenant of right to convey.
- 42. Covenant against incumbrances.
  - (1). In general.
  - (2). Taxes and assessments.
  - (3). Easements.
- 43. Covenant for quiet enjoyment.
- 44. Covenant for further assurance.
- 45. Covenant of warranty.
- 46. — In general.
- 47. — General warranty.
- 48. — Special warranty.

**(C) COVENANTS AS TO USE OF REAL PROPERTY.**

- 49. Nature and operation in general.
- 51. Buildings or other structures or improvements.
  - (1). In general.
  - (2). Buildings in general.
  - (3). Tenement houses.
- 52. Particular occupations; nuisances.

**(D) COVENANTS RUNNING WITH THE LAND.**

- 53. Covenants which may run with land in general.
- 54. Statutory provisions.

**108. COVENANTS****II. CONSTRUCTION AND OPERATION.(Cont'd)**

- 55. Property to which real covenant may be annexed.
- 56. Estate or interest to which real covenant may be annexed.
- 57. Necessity of privity of estate between covenantor and covenantee.
- 58. Covenant as part of conveyance.
- 59. Covenant for heirs and assigns.
- 61. Covenants conferring benefits in general.
- 62. Covenant of seisin.
- 63. Covenant of right to convey.
- 64. Covenant against incumbrances.
- 65. Covenant for quiet enjoyment.
- 66. Covenant for further assurance.
- 67. Covenant of warranty.
- 68. Covenants imposing burdens in general.
- 69. Covenants as to use of property.
  - (1). In general.
  - (2). Buildings or other structures or improvements.
  - (3). Nuisances and particular occupations.
- 70. Covenants creating easement, lien, or charge.
- 71. Duration of real covenants.
- 71.5. Amendment or modification of covenants.
- 72. Release or discharge from liability on real covenants.
- 72.1. — In general.
- 73. — Agreement of parties.
- 74. — Acts or omissions of covenantor.
- 75. — Merger or revesting of estate in covenantor.
- 76. — Reconveyance with similar covenants.
- 77. Persons entitled to enforce real covenants.
- 77.1. — In general.
- 78. — Covenantees.
- 79. — Grantees and assignees in general.
  - (1). In general.
  - (2). Taking conveyance after breach.
  - (3). Covenants as to use of real property.
- 80. — Conveyance as transfer of covenant.
- 81. — Privity of estate between covenantee and grantee.
- 82. — Devisees.

**II. CONSTRUCTION AND OPERATION.(Cont'd)**

- 83. — Heirs.
- 84. Persons liable on real covenants.

**III. PERFORMANCE OR BREACH.**

- 85. Obligation to perform in general.
- 86. Demand of performance in general.
- 87. Notice to maintain or defend title.
- 87.1. — In general.
- 88. — Necessity.
- 89. — Sufficiency.
- 90. — Effect on liability in general.
- 91. Sufficiency of performance in general.
- 92. Breach in general.
- 93. Covenants of title in general.
- 94. Covenant of seisin.
- 95. Covenant of right to convey.
- 96. Covenant against incumbrances.
  - (1). In general.
  - (2). Dower.
  - (3). Leases.
  - (4). Mortgages.
  - (5). Judgments.
  - (6). Taxes and assessments.
  - (7). Easements.
  - (8). Restrictions as to use of property.
- 97. Covenant for quiet enjoyment.
- 98. Covenant for further assurance.
- 99. Covenant of warranty.
- 99.1. — In general.
- 100. — Breach in general.
  - (1). In general.
  - (2). Liens and mortgages.
  - (3). Taxes and assessments.
  - (4). Railroad right of way.
  - (5). Description of premises.
- 101. — Paramount title or right.
- 102. — Eviction.
  - (.5). In general.
  - (1). Necessity.
  - (2). Sufficiency.
- 103. Covenants as to use of property.
  - (1). In general.
  - (2). Buildings.
  - (3). Waiver of breach.

**IV. ACTIONS FOR BREACH.**

- 104. Nature and form of remedy.
- 105. What law governs.

**108H. CREDITORS' REMEDIES****IV. ACTIONS FOR BREACH.(Cont'd)**

- 106. Grounds of action in general.
- 107. Conditions precedent.
- 108. Defenses.
  - (1). In general.
  - (2). Other breaches.
  - (3). Want or failure of consideration.
- 109. Jurisdiction and venue.
- 110. Time to sue, limitations, and laches.  
*See also LIMITATION OF ACTIONS.*
- 111. Parties.
- 112. Process and appearance.
- 113. Pleading.
- 113.1. — In general.
- 114. — Declaration, complaint, or petition.
  - (1). In general.
  - (2). Averments as to parties.
  - (3). Setting forth covenant.
  - (4). Averment of performance of conditions precedent.
  - (5). Allegations as to paramount claim.
- 115. — Plea or answer, and subsequent pleadings.
- 116. — Issues, proof, and variance.
- 117. Evidence.
  - 117.1. — In general.
- 118. — Presumptions and burden of proof.
- 119. — Admissibility in general.
- 120. — Judgment as evidence of eviction.
- 121. — Judgment as evidence of paramount title or right.
  - (.5). In general.
  - (1). Admissibility.
  - (2). Conclusiveness and effect in general.
  - (3). Conclusiveness of judgment obtained after notice to covenantor.
- 122. — Weight and sufficiency.
- 123. Damages.
- 124. — In general.
- 125. — Covenant of seisin.
  - (1). In general.
  - (2). Nominal or substantial damages.
  - (3). Recovery of purchase money with interest.
  - (4). Partial breach.
  - (5). Value of improvements.

**IV. ACTIONS FOR BREACH.(Cont'd)**

- 126. — Covenant of right to convey.
- 127. — Covenant against incumbrances.
  - (1). In general.
  - (2). Nominal damages.
  - (3). Purchase money.
  - (4). Amount of actual damage, or of incumbrance.
  - (5). Amount of judgment against plaintiff, and costs.
  - (6). Unexpired term of lease.
- 128. — Covenant for quiet enjoyment.
- 129. — Covenant for further assurance.
- 130. — Covenant of warranty.
  - (1). In general.
  - (2). Nominal damages.
  - (3). Amount paid to quiet title.
  - (4). Purchase money and interest, and expenses.
  - (5). Loss of part of tract.
  - (6). Value of improvements.
  - (7). Amount or value of property received by covenantor.
- 131. — Interest.
- 132. — Costs and expenses of litigation.
  - (1). In general.
  - (2). Attorney fees.
- 133. Trial.
  - 133.1. — In general.
- 134. — Questions for jury.
- 135. — Instructions.
- 136. — Verdict and findings.
- 137. Judgment.
- 138. Execution.
- 140. Effect of recovery on title to property.

**108H. CREDITORS' REMEDIES****SUBJECTS INCLUDED**

Rights and remedies as between debtors and creditors, particularly in connection with the enforcement of money judgments, whether before or after such judgments are obtained, against debtors and their property

**108H. CREDITORS' REMEDIES**

and credits, whether possessed by the debtor or by third persons

More particularly, the remedies of attachment, execution, garnishment, trustee process, income execution, creditors' suits and other supplementary proceedings in aid of execution, and postjudgment discovery; and collective remedies other than bankruptcy, including assignments for benefit of creditors, compositions with creditors, insolvency proceedings, and marshaling assets and securities

Nature and scope of such remedies, and property and credits subject thereto

Grounds of such remedies, and jurisdiction over and proceedings to obtain them

Issuance, requisites, and validity of writs or other process or notice for obtaining such remedies, and correction and amendment thereof

Levy or service, return thereof, and liens and priorities acquired thereby

Relief against such remedies, including quashing, vacating, or setting aside writs; dissolution or discharge on giving security; and restraining or staying enforcement

Sales under execution, redemption of property sold, or conveyance thereof by officer to purchaser

Claims of third persons to subject matter, and interventions and proceedings thereon

Liabilities on bonds, undertakings or other security given to obtain, dissolve, discharge, etc., such remedies

Liabilities of persons other than officers for wrongful obtaining such remedies

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Abuse of process, see **PROCESS**

Admiralty, enforcement of decrees and orders, see **ADMIRALTY**

Bankruptcy laws and proceedings thereunder, see **BANKRUPTCY**

Charging orders, see **CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP**

Corporations, matters peculiar to remedies by or against, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

Criminal prosecutions, execution of sentence, see **PRISONS, SENTENCING AND PUNISHMENT**

Direct action by injured person against tortfeasor's liability insurer, see **INSURANCE**

Enforcement of non-money judgments, and of judgments generally, see **JUDGMENT XIX**

Equity, enforcement of decrees and orders other than for payment of money, see **RECEIVERS, SEQUESTRATION, EQUITY, JUDICIAL SALES, ASSISTANCE, WRIT OF, CONTEMPT**

Exemption of property from creditors' remedies, and protection of exemption rights, see **EXEMPTIONS, HOMESTEAD**

Fair debt collection practices, see **ANTI-TRUST AND TRADE REGULATION III**

Federal Debt Collection Procedure Act, see **UNITED STATES** ¶1205

Fraudulent conveyances, see **FRAUDULENT CONVEYANCES**

Justices of the peace, remedies on judgments of, see **JUSTICES OF THE PEACE**

Malicious prosecution, see **MALICIOUS PROSECUTION**

Municipal corporations, remedies by or against, see **MUNICIPAL CORPORATIONS**

Municipal courts and similar special courts, remedies on judgments rendered by, see **COURTS**

Officers' duties and liabilities in respect of issuance, levy, service, and return of writs or other process or notice, see **CLERKS OF COURTS, SHERIFFS AND CONSTABLES**, and topics relating to other specific officers

Particular causes or forms of action, or proceedings other than actions, see **CHILD SUPPORT, DIVORCE**, and other specific topics

Particular classes of demands, liens, etc., enforcement of, see **LANDLORD AND TENANT, MARITIME LIENS, PARTNERSHIP**, and other specific topics

Pendency of action, and notice thereof, as binding real property subject to action, see **LIS PENDENS**

Replevin, see **REPLEVIN**

Review of proceedings, see **APPEAL AND ERROR, FEDERAL COURTS**

Revival of judgment for purpose of issuing execution, see **JUDGMENT XIX**

Satisfaction of judgment, see **JUDGMENT XX**

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Sequestration of specific property to preserve it pending litigation, see SEQUESTRATION

Stay of execution pending appeal, see APPEAL AND ERROR, FEDERAL COURTS

Supersedeas of execution, see SUPERSEDEAS

- 
- I. IN GENERAL, ¶1–20.
  - II. PROPERTY OR OTHER SUBJECT MATTER WHICH CREDITORS MAY REACH, ¶21–100.
    - (A) IN GENERAL, ¶21–50.
    - (B) DEBTOR'S RIGHTS, CLAIMS, AND CREDITS AGAINST OTHERS, ¶51–70.
    - (C) OWNERSHIP OR POSSESSION OF SUBJECT MATTER, ¶71–100.
  - III. PREJUDGMENT REMEDIES IN GENERAL, ¶101–120.
  - IV. POSTJUDGMENT REMEDIES IN GENERAL, ¶121–140.
  - V. PARTICULAR REMEDIES—ATTACHMENT, ¶141–320.
    - (A) IN GENERAL, ¶141–160.
    - (B) RIGHT TO ATTACHMENT; GROUNDS, DEFENSES, AND FACTORS CONSIDERED, ¶161–190.
    - (C) PROCEEDINGS, ¶191–260.
    - (D) OPERATION AND EFFECT OF ATTACHMENT, ¶261–270.
    - (E) RELIEF AGAINST ATTACHMENT, ¶271–300.
    - (F) NONRESIDENT DEBTORS; FOREIGN ATTACHMENT, ¶301–310.
    - (G) POSTJUDGMENT ATTACHMENT, ¶311–320.
  - VI. PARTICULAR REMEDIES—EXECUTION, ¶321–640.
    - (A) IN GENERAL, ¶321–340.
    - (B) PROCEEDINGS, ¶341–410.
      - 1. IN GENERAL; ISSUANCE OF WRIT, ¶341–370.
      - 2. LEVY, ¶371–400.
      - 3. RETURN, ¶401–410.
    - (C) OPERATION AND EFFECT OF EXECUTION, ¶411–430.
    - (D) RELIEF AGAINST EXECUTION, ¶431–480.
      - 1. IN GENERAL, ¶431–450.
      - 2. STAY OR SUSPENSION OF EXECUTION, ¶451–460.

## VI. PARTICULAR REMEDIES—EXECUTION—Cont'd

### (D) RELIEF AGAINST EXECUTION—Cont'd

#### 3. RESTRAINING EXECUTION; INJUNCTION, ¶461–480.

### (E) EXECUTION SALE, ¶481–620.

#### 1. IN GENERAL; MANNER, CONDUCT, AND VALIDITY, ¶481–520.

#### 2. POST-SALE RELIEF; OPENING, VACATING, OR SETTING ASIDE, ¶521–540.

#### 3. TITLE AND RIGHTS OF PURCHASER, ¶541–570.

#### 4. REDEMPTION, ¶571–590.

#### 5. CONVEYANCE TO PURCHASER, ¶591–610.

#### 6. DISTRIBUTION OF PROCEEDS, ¶611–620.

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### (G) EXECUTION AGAINST THE PERSON, ¶631–640.

## VII. PARTICULAR REMEDIES—GARNISHMENT, ¶641–930.

### (A) IN GENERAL, ¶641–670.

### (B) RIGHT TO GARNISHMENT; GROUNDS, DEFENSES, AND FACTORS CONSIDERED, ¶671–690.

### (C) PROCEEDINGS, ¶691–850.

#### 1. IN GENERAL, ¶691–700.

#### 2. JURISDICTION AND VENUE, ¶701–720.

#### 3. INITIATION OF PROCEEDINGS, ¶721–740.

#### 4. PARTIES, PROCESS, AND APPEARANCE, ¶741–760.

#### 5. DISCLOSURE AND DISCOVERY, ¶761–790.

#### 6. EVIDENCE, ¶791–810.

#### 7. HEARING AND DETERMINATION, ¶811–830.

#### 8. ENFORCEMENT, ¶831–840.

#### 9. COSTS AND FEES, ¶841–850.

### (D) OPERATION AND EFFECT OF GARNISHMENT, ¶851–880.

#### 1. IN GENERAL, ¶851–870.

#### 2. OPERATION AND EFFECT OF JUDGMENT OR ORDER IN GARNISHMENT PROCEEDINGS, ¶871–880.

### (E) RELIEF AGAINST GARNISHMENT, ¶881–900.

**108H. CREDITORS' REMEDIES****VII. PARTICULAR REMEDIES—GARNISHMENT—Cont'd**

(F) PAYMENT OR OTHER SATISFACTION OF GARNISHMENT, *§§*901–910.

(G) PREJUDGMENT GARNISHMENT, *§§*911–930.

**VIII. PARTICULAR REMEDIES—SUPPLEMENTARY PROCEEDINGS AND SIMILAR REMEDIES IN AID OF EXECUTION, *§§*931–1000.**

(A) IN GENERAL, *§§*931–950.

(B) COURSE AND CONDUCT OF PROCEEDINGS, *§§*951–970.

(C) RECEIVERS, *§§*971–990.

(D) ENFORCEMENT OF JUDGMENT, ORDER, OR DECREE, *§§*991–1000.

**IX. PARTICULAR REMEDIES—POST-JUDGMENT DISCOVERY, *§§*1001–1040.****X. PARTICULAR REMEDIES—REMEDIES AGAINST DEBTOR'S EARNINGS, WAGES, AND OTHER INCOME, *§§*1041–1080.****XI. ASSERTION OF CLAIMS BY THIRD PERSONS, *§§*1081–1110.****XII. LIABILITIES ON BONDS, UNDERTAKINGS, OR OTHER SECURITY, *§§*1111–1130.****XIII. DEBTORS' REMEDIES AGAINST CREDITORS, *§§*1131–1170.****XIV. COLLECTIVE REMEDIES, *§§*1171–1193.****I. IN GENERAL.**

1. In general.

2. What is debt; nature and definition.

3. Debtor-creditor relationship.

*Borrower-lender relationship, see FINANCE, BANKING, AND CREDIT II.*

4. — In general.

6. — Fiduciary duties.

7. Actions and proceedings in general.

8. Action of debt.

9. Insolvency and insolvent debtors in general.

*Insolvency proceedings, see *§*1183.*

10. Exclusive, concurrent, and conflicting remedies.

11. — In general.

12. — Prejudgment remedies.

13. — Remedies against insurers.

14. — Legal or equitable remedies.

**I. IN GENERAL.(Cont'd)**

15. What law governs.

16. Federal preemption.

*See also STATES I(B).*

**II. PROPERTY OR OTHER SUBJECT MATTER WHICH CREDITORS MAY REACH.**

*Debtor's earnings, wages, and other income, see *§*1052. Property subject to collective remedies, see XIV. Exemptions from forced sale, see EXEMPTIONS, HOMESTEAD.*

**(A) IN GENERAL.**

21. In general.

22. Real or personal property in general.

23. Legal or equitable interests in general.

24. Contingency and certainty of interest in general.

25. Assignability or transferability of interest in general.

26. Contractual interests in general.

27. Mortgaged, pledged, or otherwise encumbered property.

28. Rights or interests secured by liens.

29. Interests in corporations and other organizations.

30. Interests under wills, trusts, and estates.

31. Interests under leases.

32. Money.

33. Instruments and securities for payment of money.

34. Pensions and retirement funds.

35. Intangible and intellectual property.

36. Internet domain names and websites.

37. Licenses, franchises, and privileges.

38. Crops, timber, and fixtures.

39. Public property, institutions, or lands.

40. Private property used for public purpose.

**(B) DEBTOR'S RIGHTS, CLAIMS, AND CREDITS AGAINST OTHERS.**

51. In general.

52. Rights of action in general.

53. Certainty, maturity, and contingency in general.

54. Tort claims.

55. Verdicts.

56. Judgments.

57. Settlements and payments thereon.

58. Insurers and insurance policies.

59. — In general.

**108H. CREDITORS' REMEDIES****II. PROPERTY OR OTHER SUBJECT  
MATTER WHICH CREDITORS  
MAY REACH.**(Cont'd)

- 60. — Tort claims; bad faith.
- 61. Effect of payment in advance.

**(C) OWNERSHIP OR POSSESSION  
OF SUBJECT MATTER.**

- 71. In general.
- 72. Subject matter held by persons other than debtor.
- 73. — In general.
- 74. — Garnishees in general.
- 75. — Agents and brokers.
- 76. — Attorneys.
- 77. — Bailees, consignees, and carriers.
- 78. — Financial institutions and intermediaries.
- 79. — Public entities, officers, and employees.
- 80. Subject matter in custody of the law.
- 81. — In general.
- 82. — Deposits and funds in court.
- 83. — Property held under judicial process.
- 84. — Property held by executors, administrators, guardians, or trustees.
- 85. Subject matter in escrow.
- 86. Subject matter transferred by debtor.
- 87. — In general.
- 88. — Proceeds of transfer.
- 89. Joint or several ownership or possession.
- 90. Disputed ownership or possession.

**III. PREJUDGMENT REMEDIES IN GENERAL.**

- 101. In general.
- 102. Claims on which prejudgment remedies are authorized.
- 103. Right to prejudgment remedies; grounds, defenses, and factors considered.
- 104. — In general.
- 105. — Probable cause; likelihood of success.
- 106. Persons entitled to prejudgment remedies.
- 107. Persons subject to prejudgment remedies.
- 108. Proceedings.
- 109. — In general.

**III. PREJUDGMENT REMEDIES  
IN GENERAL.**(Cont'd)

- 110. — Affidavits and evidence.
- 111. — Amount of award.
- 112. Operation and effect.
- 113. — In general.
- 114. — Lien and priority.
- 115. Relief against prejudgment remedies.

**IV. POSTJUDGMENT REMEDIES  
IN GENERAL.***See also JUDGMENT XIX.*

- 121. In general.
- 122. Actions and proceedings in which postjudgment remedies are authorized.
- 123. Judgments and orders on which postjudgment remedies are authorized.
- 124. Right to postjudgment remedies; grounds, defenses, and factors considered.
- 125. Persons entitled to postjudgment remedies.
- 126. Persons subject to postjudgment remedies.
- 127. Proceedings.
- 128. Operation and effect.
- 129. — In general.
- 130. — Lien and priority.
- 131. Relief against postjudgment remedies.

**V. PARTICULAR REMEDIES—ATTACHMENT.****(A) IN GENERAL.**

- 141. In general.
- 142. Attachment as legal or equitable remedy.
- 143. Attachment as harsh or extraordinary remedy.
- 144. Claims on which attachment is authorized.
- 145. — In general.
- 146. — Contracts in general.
- 147. — Torts in general.
- 148. — Certainty, maturity, and contingency.
- 149. Persons entitled to attachment.
- 150. Persons subject to attachment.
- 151. Simultaneous and successive attachments.



**108H. CREDITORS' REMEDIES****(B) RIGHT TO ATTACHMENT; GROUNDS, DEFENSES, AND FACTORS CONSIDERED.**

- 161. In general.
- 162. Attachment as discretionary remedy.
- 163. Factors concerning claim or cause of action.
- 164. — In general.
- 165. — Probable cause; likelihood of success.
  - (1). In general.
  - (2). Particular cases.
- 166. — Amount of claim or demand.
  - (1). In general.
  - (2). Particular cases.
- 167. Factors concerning debtor.
- 168. — In general.
- 169. — Insolvency or inability to satisfy demand.
- 170. — Refusal to pay or secure demand.
- 171. — Absconding, absence, or concealment.
  - (1). In general.
  - (2). Intended absconding, absence, or concealment.
- 172. — Acts in official or fiduciary capacity.
- 173. — Fraud in contracting or incurring liability.
- 174. — Criminal act in incurring liability.
- 175. Factors concerning debtor's property.
- 176. — In general.
- 177. — Removal or concealment of property.
- 178. — Fraudulent transfer or other disposition of property.
 

*Includes attachment of property of debtor generally. Excludes attachment as remedy for reaching particular property fraudulently transferred, see FRAUDULENT CONVEYANCES*  $\S$ 228.
- 179. — Intended removal, concealment, transfer, or other disposition.
- 180. Waiver or loss of right.

**(C) PROCEEDINGS.**

- 191. In general.
- 192. Right to notice and hearing in general.
- 193. Authority of courts, judges, and judicial officers in general.
- 194. Jurisdiction.
- 195. — In general.
- 196. — Personal jurisdiction.

**V. PARTICULAR REMEDIES— ATTACHMENT.(Cont'd)**

- 197. — Jurisdiction of property attached.
- 198. Venue.
 

*Change of venue, see VENUE III.*
- 199. Time for proceedings; limitations and laches.
- 200. Parties.
- 201. Process.
 

*Service of writ or warrant of attachment, see*  $\S$ 240.
- 202. Appearance.
- 203. Bond, undertaking, or other security.
- 204. — In general.
- 205. — Parties by whom and to whom given.
- 206. — Form, requisites, and sufficiency.
- 207. — Amendment; additional or new security.
- 208. — Defects, objections, and waiver.
- 209. — Operation and effect.
- 210. Pleadings and motions.
- 211. Affidavits.
- 212. — In general.
- 213. — Persons who may make; authority to take.
- 214. — Form, requisites, and sufficiency.
- 215. — Amendment; supplemental affidavits.
- 216. — Defects, objections, and waiver.
- 217. — Operation and effect.
- 218. Responsive pleadings, motions, and affidavits.
- 219. Evidence in general.
- 220. Presumptions, inferences, and burden of proof.
- 221. Admissibility of evidence.
- 222. Weight and sufficiency of averments and evidence.
- 223. — In general.
- 224. — Probable cause; likelihood of success.
- 225. — Amount of claim or demand.
- 226. Trial or hearing.
- 227. — In general.
- 228. — Questions of law or fact.
- 229. — Instructions.
- 230. — Verdict or findings.
- 231. Judgment or order.
- 232. — In general.
- 233. — Default, and relief therefrom.

**108H. CREDITORS' REMEDIES****V. PARTICULAR REMEDIES—  
ATTACHMENT.(Cont'd)**

- 234. Costs and fees.
- 235. Writ or warrant of attachment.
- 236. — In general.
- 237. — Form, requisites, and sufficiency.
- 238. — Amendment; supplemental writs; variance.
- 239. — Defects, objections, and waiver.
- 240. — Service.
- 241. — Return.
- 242. Levy.
- 243. — In general.
- 244. — Authority and powers of levying officer.
- 245. — Mode and sufficiency of levy.
  - (1). In general.
  - (2). Personal property in general.
  - (3). Particular kinds or items of property.
  - (4). Shares of stock.
  - (5). Contracts and instruments for payment of money.
  - (6). Real property.
- 246. — Notice of levy.
- 247. Inventory and appraisalment.
- 248. Amount of property attached; excessive levy.
- 249. Enforcement in general.
- 250. Discovery in aid of attachment.

**(D) OPERATION AND EFFECT OF ATTACHMENT.**

- 261. In general.
- 262. Lien and priority.
- 263. — In general.
- 264. — Commencement, perfection, and duration.
- 265. — Priorities between attachments.
- 266. — Priorities against other liens or claims.
- 267. Property acquired after attachment.
- 268. Property transferred after attachment.
- 269. Custody and disposition of property.

**(E) RELIEF AGAINST ATTACHMENT.**

- 271. In general.
- 272. Right to relief; grounds, defenses, and factors considered.
- 273. — In general.

**V. PARTICULAR REMEDIES—  
ATTACHMENT.(Cont'd)**

- 274. — Defects or irregularities in proceedings.
- 275. — Causes subsequent to attachment.
- 276. Persons entitled to seek or oppose relief.
- 277. Proceedings to obtain relief.
- 278. — In general.
- 279. — Jurisdiction and venue.
- 280. — Time for proceedings; limitations and laches.
- 281. — Pleadings, motions, and affidavits.
- 282. — Evidence and effect of affidavits.
- 283. — Hearing and determination.
- 284. — Judgment or order.
- 285. Bond, undertaking, or other security.
- 286. Abandonment, withdrawal, and voluntary dismissal.
- 287. Operation and effect.
- 288. Return of property or other restitution.
- 289. Damages and costs on granting relief.
- 290. Restoration or reinstatement of attachment.

**(F) NONRESIDENT DEBTORS;  
FOREIGN ATTACHMENT.**

- 301. In general.
- 302. Claims on which foreign attachment is authorized.
- 303. Right to remedy; grounds, defenses, and factors considered.
- 304. Proceedings.
- 305. Operation and effect.
- 306. — In general.
- 307. — Lien and priority.
- 308. Relief against foreign attachment.
- 309. Garnishment via foreign attachment.

**(G) POSTJUDGMENT ATTACHMENT.**

- 311. In general.
- 312. Judgments on which attachment is authorized.
- 313. Proceedings.
- 314. Operation and effect.
- 315. Relief against postjudgment attachment.

**VI. PARTICULAR REMEDIES—EXECUTION.**

*Income execution, see X.*

**108H. CREDITORS' REMEDIES****(A) IN GENERAL.**

- 321. In general.
- 322. Particular forms of execution.
- 323. Actions and proceedings in which execution is authorized.
- 324. Judgments and orders on which execution is authorized.
- 325. — In general.
- 326. — Necessity.
- 327. — Nature and form.
- 328. — Validity.
- 329. — Entry, record, and docketing.
- 330. — Finality.
- 331. — Foreign judgments and orders.
- 332. — Judgments and orders of inferior courts.
- 333. — Effect of events subsequent to judgment or order.
  - (1). In general.
  - (2). Payment or satisfaction of judgment.
- 334. — Old or stale judgments and orders.
- 335. — Creation or existence of judgment lien.
- 336. Right to execution; grounds, defenses, and factors considered.
- 337. Persons entitled to execution.
- 338. Persons subject to execution.
- 339. Simultaneous and successive executions.

**(B) PROCEEDINGS.****1. IN GENERAL; ISSUANCE OF WRIT.**

- 341. In general.
- 342. Right to notice and hearing in general.
- 343. Jurisdiction and authority to issue and control.
- 344. Time for issuance.
- 345. — In general.
- 346. — Prematurity.
- 347. Discretion to issue; leave of court.
- 348. — In general.
- 349. — Lapse of time.
- 350. Order for issuance.
- 351. Form, requisites, and sufficiency of writ.
- 352. — In general.
- 353. — Statement of amount.
- 354. — Conformity to judgment or verdict.
- 355. — Amendment.
- 356. Renewal and reissue.

**VI. PARTICULAR REMEDIES—  
EXECUTION.(Cont'd)**

- 357. New or additional writs.
- 358. Defects, objections, and waiver.
- 359. Service of writ.
- 360. Control and direction by parties.

**2. LEVY.**

- 371. In general.
- 372. Authority and powers of levying officer.
- 373. Time for levy.
- 374. Mode and sufficiency of levy.
- 375. — In general.
- 376. — Demand and selection of property.
- 377. — Personal property in general.
- 378. — Particular interests in personal property.
- 379. — Corporate stock.
- 380. — Rights of action in general.
- 381. — Exhaustion of personalty before levy on realty.
- 382. — Real property and interests therein.
- 383. Levy on property taken under other process.
- 384. Successive levies under same writ.
- 385. Notice of levy.
- 386. Indorsement or entry of levy.
- 387. — In general.
- 388. — Description of property.
- 389. Inventory and appraisalment.
- 390. Amount of property taken; excessive levy.
- 391. Defects, objections, and waiver.

**3. RETURN.**

- 401. In general.
- 402. Time for making.
- 403. Form, requisites, and sufficiency.

**(C) OPERATION AND EFFECT OF EXECUTION.**

- 411. In general.
- 412. Operation and effect of levy in general.
- 413. Operation and effect of return in general.
- 414. Lien and priority.
- 415. — In general.
- 416. — Commencement, perfection, and duration.
- 417. — Priorities between executions.

**108H. CREDITORS' REMEDIES****VI. PARTICULAR REMEDIES—  
EXECUTION.(Cont'd)**

- 418. — Priorities against other liens or claims.
- 419. Property acquired after execution.
- 420. Property transferred after execution.
- 421. Effect of death of party after issuance of writ.
- 422. Custody and disposition of property.  
*Sale, see VI(E).*

**(D) RELIEF AGAINST EXECUTION.***Post-sale relief, see VI(E)2.***1. IN GENERAL.**

- 431. In general.
- 432. Right to relief; grounds, defenses, and factors considered.
- 433. — In general.
- 434. — Causes subsequent to execution.
- 435. Proceedings for relief.
- 436. Bond, undertaking, or other security.
- 437. Abandonment, withdrawal, and voluntary dismissal.
- 438. Operation and effect.
- 439. Damages and costs on granting relief.
- 440. Restoration or reinstatement of execution.

**2. STAY OR SUSPENSION OF EXECUTION.**

- 451. In general.
- 452. Discretion in general.
- 453. Grounds.
- 454. Proceedings.
- 455. Security or other conditions.
- 456. Operation and effect.
- 457. Agreement to stay or suspend execution.

**3. RESTRAINING EXECUTION; INJUNCTION.***Post-sale relief, see VI(E)2.*

- 461. In general.
- 462. Grounds.
- 463. — In general.
- 464. — Existence and adequacy of other remedy and irreparable injury.
- 465. — Attack on judgment or execution.
- 466. — Claim of property by third person, and cloud on title.
- 467. Proceedings.
- 468. — In general.
- 469. — Jurisdiction and venue.

**VI. PARTICULAR REMEDIES—  
EXECUTION.(Cont'd)**

- 470. — Time for proceedings, laches, and conditions precedent.
- 471. — Persons entitled and parties to proceedings.
- 472. — Pleading.
- 473. — Evidence.
- 474. — Hearing and determination.
- 475. — Relief; damages and costs.
- 476. Temporary or preliminary injunction.
- 477. Damages and costs on dissolving injunction.

**(E) EXECUTION SALE.***Includes sheriff's sale.***1. IN GENERAL; MANNER, CONDUCT,  
AND VALIDITY.**

- 481. In general.
- 482. Authority to sell.
- 483. — In general.
- 484. — Venditioni exponas.
- 485. Powers of officer in making sale.
- 486. Mode of sale.
- 487. Place of sale.
- 488. Time of sale.
- 489. Notice of sale.
- 490. — In general.
- 491. — Requisites and sufficiency in general.
- 492. — Time for notice.
- 493. — Description of property.
- 494. Postponement or stay.
- 495. Sale in parcels.
- 496. Order of offering for sale.
- 497. Conduct of sale in general.
- 498. Terms and conditions.
- 499. Persons who may purchase.
- 500. Bids.
- 501. — In general.
- 502. — Withdrawal.
- 503. — Acceptance or rejection.
- 504. Payment of bid.
- 505. — In general.
- 506. — Purchase by creditor.
- 507. Failure to comply with bid.
- 508. — In general.
- 509. — Resale.
- 510. — Liabilities of bidders.

**108H. CREDITORS' REMEDIES****VI. PARTICULAR REMEDIES—  
EXECUTION.(Cont'd)**

- 511. — Actions on bids; summary proceedings.
- 512. Entry and record of sale.
- 513. Certificate of sale.
- 514. Confirmation.
- 515. Persons who may question validity of sale.
- 516. — In general.
- 517. — Waiver and estoppel.
- 518. Presumption of validity.

**2. POST-SALE RELIEF; OPENING, VACATING,  
OR SETTING ASIDE.**

*Enjoining or otherwise restraining sale, see VI(D)3.*

- 521. In general.
- 522. Discretion in general.
- 523. Grounds.
- 524. — In general.
- 525. — Defects or irregularities in execution or levy.
- 526. — Irregularities or misconduct affecting sale.
- 527. — Inadequacy of price in general.
- 528. — Inadequacy of price in connection with other objections.
  - (1). In general.
  - (2). Irregularities affecting sale.
- 529. Proceedings.
- 530. — In general.
- 531. — Time for proceedings; limitations and laches.
- 532. — Pleading, motion, or other application.
- 533. — Evidence.
- 534. — Hearing and determination.
- 535. Security or other conditions.
- 536. Operation and effect.
- 537. Collateral attack.

**3. TITLE AND RIGHTS OF PURCHASER.**

- 541. In general.
- 542. Property passing by sale.
- 543. Estate or interest acquired.
- 544. — In general.
- 545. — Particular estates or interests.
- 546. — Time as of which title vests in purchaser.
- 547. Rights passing as incidents.

**VI. PARTICULAR REMEDIES—  
EXECUTION.(Cont'd)**

- 548. Liens, encumbrances, and equities.
- 549. Bona fide purchasers.
- 550. — In general.
- 551. — Notice.
- 552. — Judgment creditor as purchaser.
- 553. — Determination of question of bona fides.
- 554. Effect of defects or irregularities in execution, levy, or sale.
- 555. Effect of modification, vacation, or reversal of judgment.
- 556. Possession.
- 557. — In general.
- 558. — During period for redemption.
- 559. — Remedies for recovery, and proceedings thereon.
- 560. Rents and profits.
- 561. Waste.
- 562. Actions to confirm or try title.
- 563. Rights and remedies on avoidance of sale or failure of title.
- 564. — In general.
- 565. — Reimbursement.
- 566. — Recourse to parties or officer.
- 567. Liabilities of purchasers.
- 568. Assignees of certificates of sale.
- 569. Purchasers from execution purchasers.

**4. REDEMPTION.**

- 571. In general; right to redeem.
- 572. Equitable or statutory nature in general.
- 573. Persons entitled to redeem.
- 574. Persons against whom redemption may be had.
- 575. Loss of right to redeem; waiver and estoppel.
- 576. Time for redemption; laches.
- 577. Amount required to redeem.
- 578. Tender and payment.
- 579. Actions and proceedings to redeem.
- 580. Defects, objections, and waiver.
- 581. Operation and effect.

**5. CONVEYANCE TO PURCHASER.**

- 591. In general.
- 592. Time for making.
- 593. Form and contents.
- 594. — In general.

**108H. CREDITORS' REMEDIES****VI. PARTICULAR REMEDIES—  
EXECUTION.(Cont'd)**

- 595. — Recitals.
- 596. — Description of property.
- 597. Execution and delivery.
- 598. Recording and registration.
- 599. Amendment, reformation, or cancellation.
- 600. Construction and operation.
- 601. — In general.
- 602. — Conclusiveness of recitals.
- 603. — Relation back.

**6. DISTRIBUTION OF PROCEEDS.**

- 611. In general.
- 612. Mortgages and other liens.
- 613. Preferred claims.
- 614. Application to judgment.
- 615. Distribution among different judgments or executions.
- 616. Rights to surplus.
- 617. Proceedings for distribution.
- 618. Liabilities of purchaser as to application of proceeds.

**(F) PAYMENT OR OTHER SATISFACTION  
OF EXECUTION.**

- 621. In general.
- 622. Delivery of property.
- 623. Levy.
- 624. Sale.
- 625. Arrest of debtor.
- 626. Set-off of executions.
- 627. Indorsement or entry of satisfaction.
- 628. Vacating entry of satisfaction.

**(G) EXECUTION AGAINST THE PERSON.**

- 631. In general.
- 632. Proceedings to procure.
- 633. Arrest, custody, and disposition of debtor.
- 634. Discharge.
- 635. Rearrest.

**VII. PARTICULAR REMEDIES—  
GARNISHMENT.***Wage garnishment, see X.***(A) IN GENERAL.**

- 641. In general.

**VII. PARTICULAR REMEDIES—  
GARNISHMENT.(Cont'd)**

- 642. Particular forms of garnishment.
- 643. — In general.
- 644. — Trustee process.
- 645. — Attachment execution.
- 646. Actions and proceedings in which garnishment is authorized.
- 647. Judgments and orders on which garnishment is authorized.
- 648. — In general.
- 649. — Necessity.
- 650. — Validity.
- 651. — Finality.
- 652. — Old or stale judgments and orders.
- 653. Executions on which garnishment is authorized.
- 654. Persons entitled to garnishment.
- 655. Persons subject to garnishment.
- 656. — In general.
- 657. — Corporations and other organizations.
- 658. — Financial institutions and intermediaries.
- 659. — Insurers.
- 660. — Public entities, officers, and employees.
- 661. — Parties to underlying action.
- 662. Simultaneous and successive garnishments.

**(B) RIGHT TO GARNISHMENT; GROUNDS,  
DEFENSES, AND FACTORS  
CONSIDERED.**

- 671. In general.
- 672. Factors concerning principal action.
- 673. Garnishee's defenses against judgment debtor.
- 674. — In general.
- 675. — Limitations.
- 676. — Claim to property by garnishee.
- 677. — Set-off or counterclaim.
- 678. — Insurer as garnishee.
- 679. — Financial institution or intermediary as garnishee.
- 680. Judgment debtor's defenses against garnishor.
- 681. Claims to property by third persons.

**108H. CREDITORS' REMEDIES****(C) PROCEEDINGS.****1. IN GENERAL.**

- 691. In general.
- 692. Relation to principal action.
- 693. Applicable rules of procedure.
- 694. Right to notice and hearing in general.
- 695. Authority of courts, judges, and judicial officers in general.
- 696. Defects, objections, and waiver in general.

**2. JURISDICTION AND VENUE.**

- 701. In general.
- 702. Jurisdiction of principal action.
- 703. Personal jurisdiction.
- 704. — In general.
- 705. — Over judgment debtor.
- 706. — Over garnishee.
  - (1). In general.
  - (2). Nonresident garnishees.
- 707. Jurisdiction of property or other subject matter of garnishment.
- 708. — In general.
- 709. — Situs of property or indebtedness.
  - (1). In general.
  - (2). Place for payment as affecting situs.
- 710. Venue.
  - Change of venue, see VENUE III.*
- 711. Objections to jurisdiction or venue; waiver.

**3. INITIATION OF PROCEEDINGS.**

- 721. In general.
- 722. Leave of court.
- 723. Time for proceedings; limitations and laches.
- 724. Bond, undertaking, or other security.
- 725. Pleadings, motions, and affidavits.
- 726. — In general.
- 727. — Form, requisites, and sufficiency in general.
- 728. — Particular cases.
- 729. — Defects, objections, and amendment.
- 730. Further or supplemental papers.

**4. PARTIES, PROCESS, AND APPEARANCE.**

- 741. In general.

**VII. PARTICULAR REMEDIES—  
GARNISHMENT.(Cont'd)**

- 742. Garnishee.
- 743. — In general.
- 744. — Summons or other notice to garnishee; writ of garnishment.
  - (1). In general.
  - (2). Form, requisites, and sufficiency.
  - (3). Service and levy.
  - (4). Return.
  - (5). Defects, objections, and amendment.
- 745. — Appearance by garnishee.
- 746. Judgment debtor.
- 747. — In general.
- 748. — Summons or other notice to judgment debtor.
  - (1). In general.
  - (2). Form, requisites, and sufficiency.
  - (3). Service.
  - (4). Return.
  - (5). Defects, objections, and amendment.
- 749. — Appearance by judgment debtor.
- 750. Bringing in other parties.
  - Intervention by other parties, see XI.*

**5. DISCLOSURE AND DISCOVERY.**

- 761. In general.
- 762. Interrogatories in general.
- 763. Answer or disclosure of garnishee.
- 764. — In general.
- 765. — Persons who may make.
- 766. — Time for making.
- 767. — Form, requisites, and sufficiency.
  - (1). In general.
  - (2). Insurer as garnishee.
  - (3). Financial institution or intermediary as garnishee.
- 768. — Amended and supplemental answers; further disclosure.
- 769. — Conclusiveness and effect.
- 770. Garnishor's response to garnishee's answer or disclosure.
- 771. — In general.
- 772. — Persons who may make.
- 773. — Time for making.
- 774. — Form, requisites, and sufficiency.
- 775. — Conclusiveness and effect.

**108H. CREDITORS' REMEDIES****VII. PARTICULAR REMEDIES—  
GARNISHMENT.(Cont'd)**

- 776. Oral examination of garnishee; deposition.
- 777. Liabilities of garnishee on false or defective answer.
- 778. Failure of garnishee to answer or make disclosure; default.
- 779. — In general.
- 780. — Proceedings on default.
- 781. — Liabilities of garnishee.
- 782. Disclosure by parties other than garnishee.

**6. EVIDENCE.**

- 791. In general.
- 792. Answer as evidence.
- 793. Presumptions, inferences, and burden of proof.
- 794. — In general.
- 795. — Insurer as garnishee.
- 796. — Financial institution or intermediary as garnishee.
- 797. Admissibility.
- 798. Degree of proof.
- 799. Weight and sufficiency.
- 800. — In general.
- 801. — Insurer as garnishee.
- 802. — Financial institution or intermediary as garnishee.

**7. HEARING AND DETERMINATION.**

- 811. In general.
- 812. Scope of inquiry and powers of court.
- 813. Time for trial or hearing.
- 814. Questions of law or fact.
- 815. Instructions.
- 816. Verdict and findings.
- 817. Judgment or order.
- 818. — In general.
- 819. — On answer or disclosure of garnishee.
- 820. — On failure of garnishee to answer or make disclosure; default.
- 821. — Notice before rendition or entry; conditional judgment and scire facias.
- 822. — Time for rendition or entry.
- 823. — Amount.
- 824. — Amendment and correction.
- 825. — Relief from judgment or order.

**VII. PARTICULAR REMEDIES—  
GARNISHMENT.(Cont'd)**

- (1). In general.
- (2). Relief from default.
- 826. Dismissal or discharge of garnishee.

**8. ENFORCEMENT.**

- 831. In general.
- 832. Equitable remedies in aid of garnishment.
- 833. — In general.
- 834. — Injunctive relief; restraining order.
- 835. Execution and enforcement of judgment.
- 836. Actions by garnishor against garnishee.
- 837. Contempt.

**9. COSTS AND FEES.**

- 841. In general.
- 842. Attorney fees.
- 843. Witness fees.
- 844. Costs and fees on appeal.

**(D) OPERATION AND EFFECT OF GARNISHMENT.****1. IN GENERAL.**

- 851. In general.
- 852. Rights, duties, and liabilities of judgment debtor.
- 853. Rights, duties, and liabilities of garnishee.
- 854. — In general.
- 855. — Liability to judgment debtor as measure.
- 856. — Liability for interest.
- 857. — Duties owed to judgment debtor.
- 858. Time of taking effect.
- 859. Lien and priority.
- 860. — In general.
- 861. — Commencement, perfection, and duration.
- 862. — Priorities between garnishments.
- 863. — Priorities against other liens or claims.
- 864. Property acquired or indebtedness incurred after garnishment.
- 865. Property transferred after garnishment.
- 866. Indebtedness paid after garnishment.
- 867. Insurer as garnishee.
- 868. Financial institution or intermediary as garnishee.



**108H. CREDITORS' REMEDIES****2. OPERATION AND EFFECT OF JUDGMENT OR ORDER IN GARNISHMENT PROCEEDINGS.**

- 871. In general.
- 872. Judgment on default or admission.
- 873. Foreign judgment.
- 874. Judgment for garnishee.

**(E) RELIEF AGAINST GARNISHMENT.**

- 881. In general.
- 882. Right to relief; grounds, defenses, and factors considered.
- 883. — In general.
- 884. — Causes subsequent to garnishment.
- 885. Proceedings for relief.
- 886. — In general.
- 887. — Motions in general.
- 888. — Time for proceedings; limitations and laches.
- 889. — Evidence, hearing, and determination.
- 890. — Costs and fees.
- 891. Bond, undertaking, or other security.
- 892. Abandonment, withdrawal, and voluntary dismissal.
- 893. Operation and effect.
- 894. Restoration or reinstatement of garnishment.

**(F) PAYMENT OR OTHER SATISFACTION OF GARNISHMENT.**

- 901. In general.
- 902. Delivery of property.
- 903. Payment into court or to officer.
- 904. Payment or delivery without judgment or order of court.

**(G) PREJUDGMENT GARNISHMENT.**

- 911. In general.
- 912. Actions and proceedings in which pre-judgment garnishment is authorized.
- 913. Right to prejudgment garnishment; grounds, defenses, and factors considered.
- 914. — In general.
- 915. — Probable cause; likelihood of success.
- 916. Proceedings; notice and hearing.
- 917. Operation and effect of prejudgment garnishment.
- 918. — In general.

**VII. PARTICULAR REMEDIES—GARNISHMENT.(Cont'd)**

- 919. — Lien and priority.
- 920. Relief against prejudgment garnishment.
- 921. Payment or other satisfaction of prejudgment garnishment.

**VIII. PARTICULAR REMEDIES—SUPPLEMENTARY PROCEEDINGS AND SIMILAR REMEDIES IN AID OF EXECUTION.****(A) IN GENERAL.**

- 931. In general.
- 932. Particular remedies and proceedings.
- 933. — In general.
- 934. — Garnishment as supplementary proceeding; garnishment in aid of execution.
- 935. — Injunction against disposition of property; restraining notice.
- 936. — Order for payment or delivery of property; turnover.
- 937. — Creditors' bill or suit.
- 938. — Reach and apply.
- 939. Judgments, orders, executions, and liens on which remedies or proceedings are authorized.
- 940. Persons entitled to seek remedies or maintain proceedings.
- 941. Persons against whom remedies may be sought or proceedings maintained.
- 942. Simultaneous and successive remedies or proceedings.

**(B) COURSE AND CONDUCT OF PROCEEDINGS.**

- 951. In general.
- 952. Jurisdiction and venue.
- 953. Time for proceedings; limitations and laches.
- 954. Parties.
- 955. Process and appearance.
- 956. Pleading or affidavit.
- 957. Evidence.
- 958. — In general; admissibility.
- 959. — Presumptions, inferences, and burden of proof.
- 960. — Weight and sufficiency.
- 961. Dismissal.
- 962. Reference.
- 963. Trial or hearing.

**108H. CREDITORS' REMEDIES****VIII. PARTICULAR REMEDIES—SUPPLEMENTARY PROCEEDINGS AND SIMILAR REMEDIES IN AID OF EXECUTION.(Cont'd)**

- 964. Judgment, order, or decree; relief awarded.
- 965. Lien or other rights acquired by proceedings.
- 966. Costs and fees.
- 967. Defects and irregularities in proceedings, and waiver thereof.
- 968. Relief against proceedings, judgments, orders, and decrees.

**(C) RECEIVERS.**

- 971. In general.
- 972. Discretion of court in general.
- 973. Grounds for appointment.
- 974. Persons eligible for appointment.
- 975. Proceedings for appointment.
- 976. — In general.
- 977. — Notice of application.
- 978. Bond, undertaking, or other security for appointment.
- 979. Commencement, duration, and termination of receivership.
- 980. Title to and possession of property.
- 981. Management and disposition of property.
- 982. Actions and proceedings.
- 983. Accounting and compensation.

**(D) ENFORCEMENT OF JUDGMENT, ORDER, OR DECREE.**

- 991. In general.
- 992. Contempt.
- 993. — In general.
- 994. — Acts or omissions constituting contempt.
- 995. — Proceedings to punish.
- 996. — Punishment.

**IX. PARTICULAR REMEDIES—POSTJUDGMENT DISCOVERY.**

- 1001. In general.
- 1002. Judgments, orders, and executions on which discovery is authorized.
- 1003. Right to discovery; grounds, defenses, and factors considered.
- 1004. Persons entitled to seek discovery.

**IX. PARTICULAR REMEDIES—POSTJUDGMENT DISCOVERY.(Cont'd)**

- 1005. Persons against whom discovery may be sought.
- 1006. — In general.
- 1007. — Debtor.
- 1008. — Third persons.
- 1009. Simultaneous and successive discovery.
- 1010. Proceedings in general.
- 1011. Jurisdiction and authority of court or judge.
- 1012. Time for proceedings; limitations and laches.
- 1013. Pleadings and affidavits.
- 1014. Order or subpoena.
- 1015. Service or other notice.
- 1016. Scope of inquiry.
- 1017. Conduct of examination.
- 1018. Interrogatories.
- 1019. Production of documents.
- 1020. Subpoena duces tecum.
- 1021. Work-product privilege.
- 1022. Protective orders.
- 1023. Lien or other rights acquired by proceedings.
- 1024. Costs and fees.
- 1025. Defects and irregularities in proceedings, and waiver thereof.
- 1026. Relief against proceedings and orders.
- 1027. — In general.
- 1028. — Quashing subpoenas.
- 1029. Use and effect of testimony or information.
- 1030. Enforcement.
- 1031. — In general.
- 1032. — Sanctions.
- 1033. — Contempt.

**X. PARTICULAR REMEDIES—REMEDIES AGAINST DEBTOR'S EARNINGS, WAGES, AND OTHER INCOME.**

- 1041. In general.
- 1042. Actions and proceedings in which remedies are authorized.
- 1043. Judgments, orders, and executions on which remedies are authorized.
- 1044. Right to remedy; grounds, defenses, and factors considered.
- 1045. — In general.
- 1046. — Execution.

**108H. CREDITORS' REMEDIES****X. PARTICULAR REMEDIES—REMEDIES AGAINST DEBTOR'S EARNINGS, WAGES, AND OTHER INCOME.**(Cont'd)

- 1047. — Garnishment.
- 1048. — Installment payment order.
- 1049. Persons entitled.
- 1050. Persons subject.
- 1051. Simultaneous and successive remedies.
- 1052. Income and earnings which creditors may reach.  
*Exemptions from forced sale, see EXEMPTIONS, HOMESTEAD.*
- 1053. — In general.
- 1054. — Money to become due; future income.
- 1055. — Income and earnings derived from employment.
  - (1). In general.
  - (2). Public employment.
- 1056. — Other particular kinds and sources of income and earnings.
- 1057. — Amount available to creditor.
- 1058. — Effect of payment in advance.
- 1059. Proceedings.
- 1060. — In general.
- 1061. — Parties, process, and appearance.
- 1062. — Disclosure and discovery.
- 1063. — Evidence.
- 1064. — Trial or hearing.
- 1065. — Judgment or order.
- 1066. — Costs and fees.
- 1067. Operation and effect.
- 1068. — In general.
- 1069. — Lien or priority.
- 1070. Relief against remedies.
- 1071. — In general.
- 1072. — Proceedings.
- 1073. Payment or other satisfaction.
- 1074. Prejudgment remedies.
- 1075. — In general.
- 1076. — Proceedings; notice and hearing.

**XI. ASSERTION OF CLAIMS BY THIRD PERSONS.**

- 1081. In general.
- 1082. As to subject matter of attachment.
- 1083. As to subject matter of execution.
- 1084. As to subject matter of garnishment.
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Capacity to commit crime, nature and extent of responsibility therefore in general, and responsibility of principals, accessories, etc.

Jurisdiction over and place of prosecution of crimes

Limitation of time for prosecution

Preliminary complaints, warrants, examination and commitment

Arraignment and pleas

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Evidence in criminal proceedings  
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*§29(5) to 29(15) include, in descending order, both multiple charges of the same offense and charges of the described offense and another offense, e.g., a charge encompassing both a weapons offense and homicide would be classified at §29(15).*
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**II. DEFENSES IN GENERAL.(Cont'd)**

- 37.15. — Vindictive prosecution.
  - (1). In general.
  - (2). Particular cases.
- 37.20. Good faith; advice of counsel.
- 38. Compulsion or necessity; justification in general.  
*Homicide, see HOMICIDE* *⊗*763.
- 38.5. Conduct or condition subsequent to offense.
- 39. Ratification by victim; consent in general.
- 40. Condonation and settlement.
- 41. Reparation.
- 42. Immunity to one furnishing information or evidence.
  - 42.1. — In general.
  - 42.2. — Power to grant immunity.
  - 42.3. — Types of immunity.
    - (1). In general.
    - (2). Transactional immunity.
    - (3). Use immunity.
  - 42.4. — Grounds or justification for grant of immunity.
  - 42.5. — Agreements granting immunity.
    - (1). In general.
    - (2). Validity.
    - (3). Performance and breach.
  - 42.6. — Effect of grant of immunity.
  - 42.7. — Enforcement of grant of immunity.
    - (1). In general.
    - (2). Evidence.
    - (3). Hearing.
- 43. Availability or pendency of civil action.
- 43.5. Inconsistent defenses.  
*Excludes alibi, see* *⊗*31.5, *above, and entrapment, see* *⊗*37, *above.*

**III. ATTEMPTS.**

- 44. In general.

**IV. SOLICITATION.**

- 45. In general.

**V. MISCELLANEOUS CRIMES.**

- 45.10. Abduction.
- 45.15. Affray.
- 45.20. Blasphemy.
- 45.25. Common Scold.
- 45.30. Dueling.

**110. CRIMINAL LAW****V. MISCELLANEOUS CRIMES.**(Cont'd)

- 45.35. Embracery.
- 45.40. Fornication.
- 45.45. Miscegenation.
- 45.50. Piracy.
- 45.55. Prize Fighting.

**VI. CAPACITY TO COMMIT AND RESPONSIBILITY FOR CRIME.**

*Competency to stand trial, see MENTAL HEALTH* *§*432; *homicide, see HOMICIDE* *§*815–829.

- 46. Capacity in general.
- 47. Insanity.
- 48. — In general.
- 49. — Insane delusions or partial insanity.
- 50. — Irresistible impulse.
- 51. — Moral and emotional insanity.
- 52. Intoxication.
- 53. — In general.
- 54. — Aggravation of offense.
- 55. — Existence of specific intent essential to offense.
- 56. — Involuntary intoxication.
- 57. — Delirium tremens or insanity resulting from intoxication.
- 58. Persons acting under authority or direction of others.

**VII. PARTIES TO OFFENSES.**

- 59. Principals, aiders, abettors, and accomplices in general.
  - (1). In general.
  - (2). Existence of distinction.
  - (3). Presence.
  - (4). Community of unlawful intent.
  - (5). Aiding, abetting, or other participation in offense.
- 60. Constitutional and statutory provisions.
- 61. Principals in first degree.
  - 61.1. — In general.
- 62. — Commission of offense by agent or employee.
- 63. Principals in second degree.
- 64. — In general.
- 65. — Presence.
- 66. — Community of unlawful purpose.
- 67. — Aiding or abetting or other participation in offense.
- 68. Accessories before the fact.

**VII. PARTIES TO OFFENSES.**(Cont'd)

- 69. — In general.
- 70. — Absence.
- 71. — Community of unlawful purpose.
- 72. — Incitement to offense.
- 73. — Repentance and withdrawal.
- 74. Accessories after the fact.
- 75. — In general.
- 76. — Knowledge of offense.
- 77. — Assistance.
- 78. Prosecution and punishment of principals in first and second degree.
- 79. Prosecution and punishment of principals and accessories.
- 80. — In general.
- 81. — Accessories before the fact.
- 82. — Accessories after the fact.

**VIII. JURISDICTION.**

*See also CONSTITUTIONAL LAW* *§*4459.

- 83. Nature and scope of criminal jurisdiction.
- 84. Constitutional and statutory provisions.
  - (1). In general.
  - (2). Right to confer and limit jurisdiction.
  - (3). Conferring extraterritorial jurisdiction.
  - (4). Creating local and special courts.
  - (5). Impairing or enlarging jurisdiction conferred by Constitution.
  - (6). Effect of statute conferring jurisdiction on another court.
- 85. Courts invested with criminal jurisdiction.
- 86. — In general.
- 87. — Limited or inferior jurisdiction.
- 88. — Municipal and other local courts.
- 89. — United States courts.
- 90. Jurisdiction of justices of the peace, police justices, and other officers.
  - (1). In general.
  - (2). Jurisdiction of offense.
  - (3). Extent of punishment.
  - (4). Territorial extent.
  - (5). Concurrent jurisdiction.
  - (6). Effect of conferring jurisdiction on other courts of same grade.
- 91. Jurisdiction of offense.
- 92. — In general.
- 93. — Nature or grade of offense.

**110. CRIMINAL LAW****VIII. JURISDICTION.**(Cont'd)

- 94. — Extent of penalty.
- 95. — Offenses against United States and state or territory.
- 96. — Offenses against state and municipality.
- 97. — Locality of offense.
  - (.5). In general.
  - (1). Offenses outside of state.
  - (2). Waters bordering on or forming boundaries of state.
  - (3). Offenses on the high seas or beyond the jurisdiction of any state.
  - (4). Territory ceded to or under exclusive control of United States.
  - (5). Inferior and municipal courts.
- 98. Jurisdiction of the person.
- 99. Mode of acquiring jurisdiction.
 

*Effect of charging instrument on jurisdiction, see INDICTMENTS AND CHARGING INSTRUMENTS* ¶320.
- 100. Exercise of jurisdiction in general.
  - (1). In general.
  - (2). Different departments of same court.
  - (3). Priority of jurisdiction.
- 101. Transfer of causes.
  - (.5). In general.
  - (1). Between federal courts.
  - (2). Between state courts in general.
  - (3). Grounds for transfer between state courts.
  - (4). Proceedings for transfer between state courts.
  - (5). Proceedings after transfer between state courts.
  - (6). Between justices' courts.
- 102. Loss or divestiture of jurisdiction.
- 103. Jurisdiction to be shown by record.
- 104. Presumptions as to jurisdiction.
- 105. Waiver of objections.

**IX. VENUE.**

*See also CONSTITUTIONAL LAW* ¶4459.

**(A) PLACE OF BRINGING PROSECUTION.**

- 106. Nature and necessity of venue in prosecution.
- 107. Constitutional and statutory provisions.
- 108. Locality of offense in general.

**IX. VENUE.**(Cont'd)

- (1). In general.
- (2). Organization of new county.
- 109. Offenses committed without presence of accused.
- 110. Principals and accessories.
- 111. Offenses committed on or near boundary between counties.
- 112. Offenses committed partly in one county and partly in another.
  - (1). In general.
  - (2). Abortion.
  - (3). Conspiracy.
  - (4). Embezzlement.
  - (5). False pretenses and frauds.
  - (6). Homicide.
  - (7). Larceny.
  - (8). Pollution of waters.
  - (9). Receiving stolen goods.
- 113. Offenses against United States.
- 114. Offenses committed beyond territorial limits of jurisdiction.

**(B) CHANGE OF VENUE.**

- 115. Power and duty of court in general.
- 116. Constitutional and statutory provisions.
- 117. Right of prosecution to change.
- 118. Right of accused to change.
- 119. — In general.
- 120. — Codefendants.
- 121. Discretion of court.
- 122. Successive applications.
- 123. Grounds for change.
- 124. — In general.
- 125. — Disqualification or prejudice of judge.
- 126. — Local prejudice.
  - (1). In general.
  - (2). Particular offenses.
- 127. — Convenience of witnesses.
- 128. Change on court's own motion.
- 129. Application.
- 130. — In general.
- 131. — Jurisdiction.
- 132. — Time for making.
- 133. — Notice.
- 134. — Affidavits and other proofs.
  - (1). In general.
  - (2). Affidavits.

**110. CRIMINAL LAW****IX. VENUE.(Cont'd)**

- (3). Counter affidavits and other evidence.
- (4). Weight and effect of opposing affidavits or other evidence.
- 135. — Hearing in general.
- 136. — Presence of accused at hearing.
- 137. — Determination.
- 138. Conditions on granting or refusing change.
- 139. County or district to which change may be made.
- 140. Order granting or refusing change.
- 141. Transmission of record or transcript.
- 142. Jurisdiction and proceedings after change.
- 143. Remand.
- 144. Jurisdiction and proceedings after refusal.

**(C) OBJECTIONS AND EXCEPTIONS.**

- 145. In general.

**X. LIMITATION OF PROSECUTIONS.**

- 145.5. Nature and scope of limitations.
- 146. Constitutional and statutory provisions.
- 147. Limitations applicable.
- 148. Commencement of period of limitation.
- 148.1. — In general.
- 149. — Commission of offense in general.
- 150. — Continuing offenses.
- 151. Exceptions and suspension.
- 151.1. — In general.
- 152. — Absence, nonresidence, or concealment of accused.
- 153. — Fugitives from justice.
- 154. — Concealed or unknown offense.
- 155. Computation of time.
- 156. Commencement of prosecution.
- 157. — In general.
- 158. — Continuance or delay in prosecution.
- 159. — Amendment of proceedings.
- 160. — New proceedings after dismissal or failure of original prosecution.

**XI. FORMER JEOPARDY (OBSOLETE, SEE DOUBLE JEOPARDY).****XII. PRETRIAL PROCEEDINGS.**

*See also CONSTITUTIONAL LAW* ¶4567, 4568.

**XII. PRETRIAL PROCEEDINGS.(Cont'd)**

- 205. Nature and scope of preliminary proceedings.
- 206. Constitutional and statutory provisions.
- 207. Jurisdiction of preliminary proceedings.
  - (1). In general.
  - (2). Preliminary complaint or affidavit.
  - (3). Preliminary warrant or other process.
  - (4). Preliminary examination, holding over, and commitment.
- 208. Preliminary complaint or affidavit.
- 208.1. — In general.
- 209. — Nature and necessity.
- 210. — Persons who may make.
- 211. — Requisites and sufficiency.
  - (1). In general.
  - (2). Verification, signature, and jurat.
  - (3). Information and belief.
  - (4). Charging particular offenses.
- 212. — Examination of witnesses and evidence.
- 213. — Defects and objections.
- 214. — Amendment or substitution.
- 215. Preliminary warrant or other process.
- 215.1. — In general.
- 216. — Nature and necessity.
- 217. — Issuance.
- 218. — Requisites and sufficiency.
  - (1). In general.
  - (2). Directions for execution and return.
  - (3). Name and description of accused.
  - (4). Seal and signature.
  - (5). Description and venue of offense.
- 219. — Defects and objections.
- 220. — Amendment and return.
- 221. Removal of accused to other county or district for examination.
- 222. Necessity and requisites of preliminary examination.
- 222.1. — In general.
- 223. — Nature and necessity.
- 224. — Right of accused to examination.
- 225. — Waiver of examination.
- 226. — Authority of magistrate.
- 227. — Place for examination.
- 228. — Time for examination.
- 229. Conduct of preliminary examination.

**110. CRIMINAL LAW****XII. PRETRIAL PROCEEDINGS.(Cont'd)**

- 230. — In general.
- 231. — Presence and rights of accused.
- 232. — Representation by attorneys.
- 233. — Use and effect of complaint or affidavit.
- 234. — Reception of evidence.
- 235. — Testimony or statement of accused.
- 236. — Reduction of proceedings to writing.
- 237. — Rehearing or new trial.
- 238. Presumptions, burden of proof, and weight and sufficiency of evidence.
  - (1). In general.
  - (2). Sufficient, reasonable, or probable cause.
  - (3). Particular offenses.
  - (3.1). — In general.
  - (4). — Burglary, larceny, robbery, and false pretenses; stolen property.
  - (5). — Homicide, assault, and rape.
- 239. Discharge of accused.
- 240. Holding accused to answer.
- 241. Commitment of accused.
- 242. Removal of accused to other county or district for trial.
  - (1). In general.
  - (2). District of Columbia.
  - (3). Conditions precedent to application.
  - (4). Sufficiency of indictment or complaint.
  - (5). Conclusiveness and effect of indictment.
  - (6). Determination of validity of indictment.
  - (7). Evidence.
  - (8). Application and hearing thereon.
  - (9). Second removal.
  - (10). Warrants.
  - (11). Review.
- 243. Habeas corpus for production of accused.
- 244. Record and certificate or return of preliminary examination.
- 245. Objections and exceptions in preliminary proceedings.

**XIII. NONJURY OR BENCH TRIAL AND CONVICTION.**

- 247. In general; nature and form of proceeding.
- 248. Constitutional and statutory provisions.
- 249. Offenses which may be prosecuted summarily.
- 250. Jurisdiction.
- 251. Rights of accused in general.
- 252. Complaint or information and plea.
- 253. Removal of case to grand jury.
- 254. Trial.
  - 254.1. — In general.
  - 254.2. — Trial on transcript or stipulated facts; equivalence to guilty plea.
  - 254.3. — Remarks and conduct of judge.
- 255. — Reception of evidence.
  - 255.1. — Counsel; conduct and argument.
  - 255.2. — Questions of law or fact.
  - 255.3. — Deliberations; matters considered.
  - 255.4. — Findings, conclusions, decision, or verdict.
- 256. Holding accused to answer.
- 257. Acquittal or conviction; motions for acquittal, directed verdict, etc.
- 258. Judgment, sentence, and record; new trial.
- 259. Commitment or certificate of conviction.
- 260. Appeal and trial de novo.
  - 260.1. — In general; judgments reviewable.
  - 260.2. — Proper mode of review.
  - 260.3. — Right of review.
  - 260.4. — Jurisdiction and proceedings for review; preservation of error.
  - 260.5. — Time of taking appeal.
  - 260.6. — Bond or undertaking for appeal.
  - 260.7. — Record.
  - 260.8. — Dismissal and reinstatement.
  - 260.9. — Effect of appeal.
  - 260.10. — Assignment or presentation of errors, and briefs.
  - 260.11. — Review.
    - (1). In general.
    - (2). Presumptions.
    - (3). Questions of fact.
    - (3.1). — In general.
    - (4). — Sufficiency of evidence to convict.

**110. CRIMINAL LAW****XIII. NONJURY OR BENCH TRIAL  
AND CONVICTION.(Cont'd)**

- (5). — Particular cases and questions.
- (6). Harmless error.
- 260.12. — Determination and disposition of cause.
- 260.13. — Trial de novo.

**XIV. ARRAIGNMENT.**

*See also CONSTITUTIONAL LAW* ¶4584.

- 261. Necessity of arraignment and plea.
  - (1). In general.
  - (2). Further arraignment and plea.
- 262. Waiver of arraignment and plea.
- 263. Bench warrant or other process after indictment.
- 264. Requisites and sufficiency of arraignment.
- 265. Time to plead in general.  
*Time of arraignment, see* ¶264.
- 266. Refusal or failure to plead.

**XV. PLEAS.**

- 267. Pleas in general.
- 268. — In general.
- 269. — Requisites and sufficiency.
- 270. — Several pleas.
- 271. — Duplicity.
- 272. Plea of guilty.
- 273. — In general.
  - (1). In general.
  - (2). Right to plead guilty; mental competence.
  - (3). Lesser offense, plea of guilty to.
  - (4). Requisites and proceedings for entry.
    - (4.1). — In general.
  - (5). — Entry in person or by attorney.
- 273.1. — Voluntary character.
  - (1). In general.
  - (2). Representations, promises, or coercion; plea bargaining.
  - (3). Effect of illegal detention or violation of constitutional rights; illegally acquired evidence.
  - (4). Ascertainment by court; advising and informing accused.

**XV. PLEAS.(Cont'd)**

- (5). Evidence as to voluntariness.
- 273.2. — Effect in general.  
*Excludes conclusiveness in habeas corpus proceedings, see HABEAS CORPUS* ¶276, 318.
  - (1). In general.
  - (2). Conclusiveness; necessity of further proof.
- 273.3. — Matters admitted.
- 273.4. — Waiver of rights, defenses, and objections.  
*Appeal rights, see CRIMINAL LAW* ¶1026.10(2); *right of confrontation, see CRIMINAL LAW* ¶662.80; *double jeopardy, see DOUBLE JEOPARDY* ¶202; *right to jury trial, see JURY* ¶29(4); *right to post-conviction relief, see CRIMINAL LAW* ¶1434; *habeas corpus, see also HABEAS CORPUS* ¶276, 318.
  - (1). In general.
  - (2). Illegal arrest, search, or seizure.
  - (3). Coerced confessions.
  - (4). Indictment or charging instrument.
- 274. — Withdrawal.
  - (1). In general.
  - (2). Discretion of court.
  - (3). Grounds for allowance.
    - (3.1). — In general.
  - (4). — Fraud, duress, mistake, or ignorance.
  - (5). — Hope of leniency.
  - (6). — Mental incompetency or other incapacity.
  - (7). — Lack or incompetence of counsel.
  - (8). — Innocence or doubt as to guilt.
  - (9). Time for application.
  - (10). Effect of withdrawal.
- 275. Plea of no contest or nolo contendere.
  - 275.1. — In general.
  - 275.2. — Nature and effect of plea.
  - 275.3. — Requisites and proceedings for entry.
  - 275.4. — Voluntary character.
    - (1). In general.
    - (2). Plea bargaining.
  - 275.5. — Withdrawal.
    - (1). In general.
    - (2). Grounds.
    - (3). Application or motion.
    - (4). Hearing and determination.
- 276. Plea to jurisdiction.

**110. CRIMINAL LAW****XV. PLEAS.**(Cont'd)

- 277. Pleas in abatement.
- 277.1. — In general.
- 278. — Nature and necessity.
  - (1). In general.
  - (2). Defects and irregularities as to grand jury.
- 279. — Time and order of pleading.
- 280. — Requisites and sufficiency.
  - (1). In general.
  - (2). Defects and irregularities as to grand jury.
  - (3). Another indictment pending.
  - (4). Misnomer.
  - (5). Formal requisites.
- 281. — Demurrer or motion to strike plea.
- 282. — Replication and issues.
- 283. — Evidence.
- 284. — Trial and determination.
- 285. — Judgment.
- 286. Special pleas in bar in general.  
*See also*  $\S$ 286.5 and 286.10, below.
- 286.5. Plea of insanity or incapacity.
  - (1). In general.
  - (2). Necessity; issue raised without plea.
- 286.10. Plea of guilty but mentally ill.
- 287. Plea of agreement not to prosecute.
- 288. Plea of limitation.
- 289. Plea of former jeopardy or former acquittal or conviction.
- 289.1. — In general.
- 290. — Nature and necessity.
- 291. — Time and order of pleading.
- 292. — Requisites and sufficiency.
  - (1). In general.
  - (2). Averments as to identity of person and offense, and setting out record.
  - (3). Averments of jeopardy and jurisdiction.
- 293. — Demurrer to or other contest of plea.
- 294. — Replication and issues.
- 295. — Evidence.
- 296. — Trial and determination.
- 297. — Judgment.
- 298. Plea of pardon.
- 299. Plea of not guilty.

**XV. PLEAS.**(Cont'd)

- 300. — In general.
- 301. — Withdrawal.

**XVI. NOLLE PROSEQUI OR DISCONTINUANCE.**

- 303.5. Dismissal, nolle prosequi, or discontinuance.
- 303.10. — In general.  
*Includes dismissal, etc., at the instance of the court or the prosecution. Dismissal for deficiencies in the charge, see INDICTMENTS AND CHARGING INSTRUMENTS  $\S$ 981–998, for want of evidence, see  $\S$ 752.5, for governmental misconduct generally, see  $\S$ 627.8(6), 627.10(9), 700, and 706, for governmental misconduct before the institution of the prosecution, see  $\S$ 36.6, and for speedy trial violations, see  $\S$ 577.16.*
- 303.15. — Authority and discretion of court or prosecution.
- 303.20. — Stage of proceeding.
- 303.25. — Allowance as to one of two indictments, to part of a count, or to part of several counts.
- 303.30. — Grounds and considerations.
  - (1). In general.
  - (2). Interest or furtherance of justice.
  - (3). Inconsequential or de minimis infraction.
  - (4). Bargain, agreement, or conditions; adjournment pending dismissal.
  - (5). Motion or consent of victim or private prosecutor; compromise.
- 303.35. — Proceedings; dismissal with or without prejudice.
  - (1). In general.
  - (2). Motion or suggestion by defendant.
- 303.40. — Abandonment.
- 303.45. — Reinstatement.
- 303.50. Abatement.

**XVII. EVIDENCE.**

*See also* CONSTITUTIONAL LAW  $\S$ 3801, XXVII(H)5.

**(A) JUDICIAL NOTICE.**

- 304. Judicial notice.
  - (1). In general.
  - (2). Historical facts and matters of common knowledge or belief.
  - (3). Physiological facts.



**110. CRIMINAL LAW****XVII. EVIDENCE.**(Cont'd)

- (4). Language, words and phrases, and abbreviations.
- (5). Geographical facts in general.
- (6). Location, boundaries, and population of municipalities.
- (7). Incorporation of municipality.
- (8). Location of lots and buildings in cities.
- (9). Public and private acts and proclamations.
- (10). Federal departmental regulations.
- (11). Laws of foreign states.
- (12). Ordinances.
- (13). Organization, sessions, and terms of courts.
- (14). Territorial extent of jurisdiction of courts.
- (15). Organization, sessions, and proceedings of grand jury.
- (16). Records.
- (17). Public officers, and acts and signatures thereof.
- (18). Elections.
- (19). Existence, appearance, and value of money.
- (20). Beverages and their properties.
- (21). Nature of certain games and terminology thereof.

**(B) PRESUMPTIONS AND INFERENCES.**

- 305. Presumptions.
- 305.1. — In general.
- 306. — Application in criminal prosecutions.
- 307. — Constitutional and statutory provisions.
- 308. — Innocence.
- 309. — Character.
- 310. — Capacity in general.
- 311. — Sanity.
- 312. — Intent.
- 313. — Knowledge of law.
- 314. — Knowledge of fact.
- 315. — Continuance of fact.
- 316. — Failure to explain incriminating circumstances.
- 317. — Failure to testify or call witness.

**XVII. EVIDENCE.**(Cont'd)

- 318. — Suppression, spoliation, or fabrication of evidence.
- 319. — Failure to sustain defense.
- 320. — Laws of other states or countries.
- 321. — Judicial proceedings.
- 322. — Official acts.
- 323. — Particular facts.
- 324. — Operation and effect.
- 325. — Conflicting presumptions.

**(C) BURDEN OF PROOF.**

- 326. Burden of proof.
- 326.1. — In general.
- 327. — Extent of burden on prosecution.
- 328. — Elements of offense in general.
- 329. — Matters excepted in statute defining offense.
- 330. — Matters of defense and rebuttal in general.
- 331. — Insanity.
- 332. — Intoxication.
- 333. — Alibi.
- 334. — Matters preliminary to introduction of other evidence.
- 335. — Particular facts.
- 336. — Failure to sustain burden.

**(D) FACTS IN ISSUE AND RELEVANCE.**

*See also CONSTITUTIONAL LAW* ¶4564-4671.

- 337. Facts in issue.
- 338. Relevancy in general.
  - (1). In general.
  - (2). Admissibility of circumstantial evidence.
  - (3). Evidence relevant in connection with offer of proof or evidence already introduced.
  - (4). Evidence as to acts, transactions, and occurrences to which accused is not a party.
  - (6). Evidence for purpose of testing, sustaining, or impeaching credibility or character of witnesses and others.
  - (7). Evidence calculated to create prejudice against or sympathy for accused.
  - (8). Evidence calculated to create prejudice against witness.

## 110. CRIMINAL LAW

## XVII. EVIDENCE.(Cont'd)

339. Identity of persons or things.
- 339.5. Identity of accused.  
*Extrajudicial identification and its effect as hearsay, see 421(6); declarations by persons injured, see 415(4); corroboration of witnesses, see WITNESSES.*
- 339.6. — In general.
- 339.7. — Photographs and drawings.
- (1). In general.
  - (2). Defendant in custody; counsel.
  - (3). Manner of exhibition; suggestiveness.
  - (4). Number and character of pictures.
- 339.8. — Out-of-court or pre-trial confrontation.
- (1). In general; lineup, showup or other confrontation.
  - (2). Time and manner of confrontation; suggestiveness.
  - (2.1). — In general.
  - (3). — Lineup procedure in general.
  - (4). — Number, character, and appearance of lineup participants.
  - (5). — Necessity of lineup; single suspect showup in general.
  - (6). — Confrontations at the scene or shortly after offense or arrest.
  - (7). Assistance of counsel; advice and warnings.
- 339.9. — In-court identification in general.
- (1). In general.
  - (2). Opportunity for observation; certainty and positiveness.
  - (3). Prior failure, uncertainty, or mistake by witness.
- 339.10. — Effect of prior events on subsequent identification.
- (1). Prior impropriety in general.
  - (2). Photographs and drawings.
  - (3). Prior confrontation in general.
  - (4). Absence of counsel, advice or warnings.
  - (5). Illegal arrest, detention, or search.
  - (6). Independent basis; opportunity for observation.
  - (6.1). — In general.
  - (7). — Particular cases.
  - (8). — Homicide, assault, and kidnapping.

## XVII. EVIDENCE.(Cont'd)

- (9). — Robbery.
  - (10). — Sex offenses.
  - (11). — Other particular offenses.
- 339.11. — Determination of admissibility.
- (1). In general.
  - (2). Hearing, necessity and conduct; findings.
  - (3). Presumptions and burden of proof.
  - (4). Admissibility of evidence.
  - (5). Weight and sufficiency of evidence.
  - (5.1). — In general.
  - (6). — Particular cases.
  - (7). — Homicide, assault, and kidnapping.
  - (8). — Robbery.
  - (9). — Sex offenses.
  - (10). — Other particular offenses.
340. Nature and condition of property or other subject-matter of offense.
341. Personal relations.
342. Motive or absence of motive.
343. Threats and expressions of ill will.
344. Ability and opportunity.
345. Preparations and preceding circumstances.
346. Place or time of criminal act.
347. Nature of criminal act and attendant circumstances.
348. Means of committing offense and articles connected therewith.
349. Subsequent incriminating or exculpatory circumstances.
350. Subsequent condition or conduct of person injured.
351. Subsequent condition or conduct of accused.
- (1). In general.
  - (2). Conduct and declarations at time of arrest.
  - (3). Flight or refusal to flee.
  - (4). Resisting or avoiding arrest.
  - (5). Concealment of identity.
  - (6). Attempt to commit suicide.
  - (7). Silence after knowledge or commission of crime.

**110. CRIMINAL LAW****XVII. EVIDENCE.**(Cont'd)

- (8). Subornation of witnesses or jurors, and fabrication of evidence.
- (9). Escape, attempts to escape, and opportunity to escape declined.
- (10). Suppression or destruction of evidence, or misrepresentations to avoid suspicion or cast it upon another.
- 354. Insanity.
- 355. Intoxication.
- 356. Excuse or justification.
- 358. Alibi.
- 359. Incriminating others.
- 360. Matters showing relevancy of other facts.
- 361. Matters explanatory of facts in evidence or of inferences therefrom.
  - (1). In general.
  - (2). Insanity.
  - (3). Condition or conduct of accused subsequent to commission of crime.
  - (4). Confessions, admissions, statements, and declarations.

**(E) RES GESTAE.**

- 362. Res gestae; excited utterances.
- 363. — In general.
- 364. — Acts and statements of accused.
  - (.5). In general.
  - (1). Contemporaneous with commission of crime.
  - (2). Before commission of crime.
  - (3). After commission of crime.
  - (3.1). — In general.
  - (4). — Incriminating conduct and statements after commission of offense.
  - (5). — Exculpatory conduct and statements after commission of offense.
  - (6). Length of time elapsed as affecting admissibility.
  - (7). Explaining possession of stolen property.
- 365. — Other offenses part of same transaction.
  - (1). In general.
  - (2). Prior offenses.

**XVII. EVIDENCE.**(Cont'd)

- (3). Subsequent offenses.
- 366. — Acts and statements of person injured.
  - (1). In general.
  - (2). Before commission of crime.
  - (3). Subsequent to commission of crime in general.
  - (4). Incriminating accused.
  - (5). Exculpating accused.
  - (6). Length of time elapsed as affecting admissibility.
  - (7). Incompetency of person injured to testify as affecting admissibility.
- 367. — Statements as to and expressions of personal injury or suffering.
- 368. — Acts and statements of third persons.
  - (1). In general.
  - (2). Before commission of crime.
  - (3). Subsequent to commission of crime.

**(F) OTHER MISCONDUCT BY ACCUSED.**

*See also CONSTITUTIONAL LAW* ¶4669.

**1. OTHER MISCONDUCT AS EVIDENCE OF OFFENSE CHARGED IN GENERAL.**

- 368.1. In general.
- 368.2. Discretion of court in general.
- 368.3. Purposes for admitting evidence of other misconduct.
- 368.4. — In general.
- 368.5. — Showing bad character or criminal propensity in general.
- 368.6. — Connecting accused with crime charged in general.
- 368.7. Factors affecting admissibility.
- 368.8. — In general.
- 368.9. — Relevancy.
- 368.10. — Materiality.
- 368.11. — Competency.
- 368.12. — Logical connection to crime charged.
- 368.13. — Prejudicial effect and probative value.
- 368.14. — Tendency to mislead, confuse, distract, or waste time.
- 368.15. — Necessity for evidence.

**110. CRIMINAL LAW****2. ADMISSIBILITY IN PROSECUTIONS  
FOR PARTICULAR OFFENSES IN  
GENERAL.**

- 368.16. In general.
- 368.17. Arson and malicious mischief.
- 368.18. Assault and battery.
- 368.19. Burglary and trespass.
- 368.20. Conspiracy, racketeering, and money laundering.
- 368.21. Controlled substances.
- 368.22. Counterfeiting and forgery.
- 368.23. Disorderly conduct and breach of the peace.
- 368.24. Escape.
- 368.25. Extortion, threats, stalking, and harassment.
- 368.26. False pretenses and fraud.
- 368.27. Gambling offenses.
- 368.28. Homicide, mayhem, and assault with intent to kill.
- 368.29. Infants and endangered persons, offenses specific to.
- 368.30. Kidnapping and false imprisonment.
- 368.31. Larceny, embezzlement, and receiving stolen property.
- 368.32. Liquor offenses.
- 368.33. Motor vehicle offenses.
- 368.34. Obscenity and lewdness.
- 368.35. Obstructing justice, bribery, and perjury.
- 368.36. Robbery.
- 368.37. Sex offenses, incest, and prostitution.
- 368.38. Tax and internal revenue offenses.
- 368.39. Weapons and explosives.
- 368.40. Other particular offenses.
- 368.41. Multiple offenses.

**3. OTHER MISCONDUCT INADMISSIBLE UNDER  
ANY OF SEVERAL THEORIES.**

- 368.42. In general.
- 368.43. Arson and malicious mischief.
- 368.44. Assault and battery.
- 368.45. Burglary and trespass.
- 368.46. Conspiracy, racketeering, and money laundering.
- 368.47. Controlled substances.
- 368.48. Counterfeiting and forgery.
- 368.49. Disorderly conduct and breach of the peace.
- 368.50. Escape.

**XVII. EVIDENCE.(Cont'd)**

- 368.51. Extortion, threats, stalking, and harassment.
- 368.52. False pretenses and fraud.
- 368.53. Gambling offenses.
- 368.54. Homicide, mayhem, and assault with intent to kill.
- 368.55. Infants and endangered persons, offenses specific to.
- 368.56. Kidnapping and false imprisonment.
- 368.57. Larceny, embezzlement, and receiving stolen property.
- 368.58. Liquor offenses.
- 368.59. Motor vehicle offenses.
- 368.60. Obscenity and lewdness.
- 368.61. Obstructing justice, bribery, and perjury.
- 368.62. Robbery.
- 368.63. Sex offenses, incest, and prostitution.
- 368.64. Tax and internal revenue offenses.
- 368.65. Weapons and explosives.
- 368.66. Other particular offenses.
- 368.67. Multiple offenses.

**4. OTHER MISCONDUCT INSEPARABLE  
FROM CRIME CHARGED.**

- 368.68. In general.
- 368.69. Interwoven occurrences in general.
- 368.70. Same transaction in general.
- 368.71. Res gestae in general.
- 368.72. Completing the narrative in general.
- 368.73. Conduct affecting grade or degree of crime charged in general.
- 368.74. Arson and malicious mischief.
- 368.75. Assault and battery.
- 368.76. Burglary and trespass.
- 368.77. Conspiracy, racketeering, and money laundering.
- 368.78. Controlled substances.
- 368.79. Counterfeiting and forgery.
- 368.80. Disorderly conduct and breach of the peace.
- 368.81. Escape.
- 368.82. Extortion, threats, stalking, and harassment.
- 368.83. False pretenses and fraud.
- 368.84. Gambling offenses.
- 368.85. Homicide, mayhem, and assault with intent to kill.

**110. CRIMINAL LAW****XVII. EVIDENCE.(Cont'd)**

- 368.86. Infants and endangered persons, of-fenses specific to.
- 368.87. Kidnapping and false imprisonment.
- 368.88. Larceny, embezzlement, and receiving stolen property.
- 368.89. Liquor offenses.
- 368.90. Motor vehicle offenses.
- 368.91. Obscenity and lewdness.
- 368.92. Obstructing justice, bribery, and per-jury.
- 368.93. Robbery.
- 368.94. Sex offenses, incest, and prostitution.
- 368.95. Tax and internal revenue offenses.
- 368.96. Weapons and explosives.
- 368.97. Other particular offenses.
- 368.98. Multiple offenses.

**5. OTHER MISCONDUCT PART OF PLAN EMBRACING MORE THAN ONE ACT.**

- 370.1. In general.
- 370.2. Plan or scheme in general.
- 370.3. System in general.
- 370.4. Continuing offenses in general.
- 370.5. Arson and malicious mischief.
- 370.6. Assault and battery.
- 370.7. Burglary and trespass.
- 370.8. Conspiracy, racketeering, and money laundering.
- 370.9. Controlled substances.
- 370.10. Counterfeiting and forgery.
- 370.11. Disorderly conduct and breach of the peace.
- 370.12. Escape.
- 370.13. Extortion, threats, stalking, and harassment.
- 370.14. False pretenses and fraud.
- 370.15. Gambling offenses.
- 370.16. Homicide, mayhem, and assault with intent to kill.
- 370.17. Infants and endangered persons, of-fenses specific to.
- 370.18. Kidnapping and false imprisonment.
- 370.19. Larceny, embezzlement, and receiving stolen property.
- 370.20. Liquor offenses.
- 370.21. Motor vehicle offenses.
- 370.22. Obscenity and lewdness.

**XVII. EVIDENCE.(Cont'd)**

- 370.23. Obstructing justice, bribery, and per-jury.
- 370.24. Robbery.
- 370.25. Sex offenses, incest, and prostitution.
- 370.26. Tax and internal revenue offenses.
- 370.27. Weapons and explosives.
- 370.28. Other particular offenses.
- 370.29. Multiple offenses.

**6. OTHER MISCONDUCT SHOWING MOTIVE.**

- 371.1. In general.
- 371.2. Arson and malicious mischief.
- 371.3. Assault and battery.
- 371.4. Burglary and trespass.
- 371.5. Conspiracy, racketeering, and money laundering.
- 371.6. Controlled substances.
- 371.7. Counterfeiting and forgery.
- 371.8. Disorderly conduct and breach of the peace.
- 371.9. Escape.
- 371.10. Extortion, threats, stalking, and harassment.
- 371.11. False pretenses and fraud.
- 371.12. Gambling offenses.
- 371.13. Homicide, mayhem, and assault with intent to kill.
- 371.14. Infants and endangered persons, of-fenses specific to.
- 371.15. Kidnapping and false imprisonment.
- 371.16. Larceny, embezzlement, and receiving stolen property.
- 371.17. Liquor offenses.
- 371.18. Motor vehicle offenses.
- 371.19. Obscenity and lewdness.
- 371.20. Obstructing justice, bribery, and per-jury.
- 371.21. Robbery.
- 371.22. Sex offenses, incest, and prostitution.
- 371.23. Tax and internal revenue offenses.
- 371.24. Weapons and explosives.
- 371.25. Other particular offenses.
- 371.26. Multiple offenses.

**7. OTHER MISCONDUCT SHOWING INTENT.**

- 371.27. In general.
- 371.28. Necessity that intent be in issue.
- 371.29. Arson and malicious mischief.

**110. CRIMINAL LAW****XVII. EVIDENCE.(Cont'd)**

- 371.30. Assault and battery.
- 371.31. Burglary and trespass.
- 371.32. Conspiracy, racketeering, and money laundering.
- 371.33. Controlled substances.
- 371.34. Counterfeiting and forgery.
- 371.35. Disorderly conduct and breach of the peace.
- 371.36. Escape.
- 371.37. Extortion, threats, stalking, and harassment.
- 371.38. False pretenses and fraud.
- 371.39. Gambling offenses.
- 371.40. Homicide, mayhem, and assault with intent to kill.
- 371.41. Infants and endangered persons, offenses specific to.
- 371.42. Kidnapping and false imprisonment.
- 371.43. Larceny, embezzlement, and receiving stolen property.
- 371.44. Liquor offenses.
- 371.45. Motor vehicle offenses.
- 371.46. Obscenity and lewdness.
- 371.47. Obstructing justice, bribery, and perjury.
- 371.48. Robbery.
- 371.49. Sex offenses, incest, and prostitution.
- 371.50. Tax and internal revenue offenses.
- 371.51. Weapons and explosives.
- 371.52. Other particular offenses.
- 371.53. Multiple offenses.

**8. OTHER MISCONDUCT SHOWING KNOWLEDGE.**

- 371.54. In general.
- 371.55. Arson and malicious mischief.
- 371.56. Assault and battery.
- 371.57. Burglary and trespass.
- 371.58. Conspiracy, racketeering, and money laundering.
- 371.59. Controlled substances.
- 371.60. Counterfeiting and forgery.
- 371.61. Disorderly conduct and breach of the peace.
- 371.62. Escape.
- 371.63. Extortion, threats, stalking, and harassment.
- 371.64. False pretenses and fraud.
- 371.65. Gambling offenses.

**XVII. EVIDENCE.(Cont'd)**

- 371.66. Homicide, mayhem, and assault with intent to kill.
- 371.67. Infants and endangered persons, offenses specific to.
- 371.68. Kidnapping and false imprisonment.
- 371.69. Larceny, embezzlement, and receiving stolen property.
- 371.70. Liquor offenses.
- 371.71. Motor vehicle offenses.
- 371.72. Obscenity and lewdness.
- 371.73. Obstructing justice, bribery, and perjury.
- 371.74. Robbery.
- 371.75. Sex offenses, incest, and prostitution.
- 371.76. Tax and internal revenue offenses.
- 371.77. Weapons and explosives.
- 371.78. Other particular offenses.
- 371.79. Multiple offenses.

**9. OTHER MISCONDUCT SHOWING ABSENCE OF MISTAKE OR ACCIDENT.**

- 372.1. In general.
- 372.2. Necessity that mistake or accident be in issue.
- 372.3. Arson and malicious mischief.
- 372.4. Assault and battery.
- 372.5. Burglary and trespass.
- 372.6. Conspiracy, racketeering, and money laundering.
- 372.7. Controlled substances.
- 372.8. Counterfeiting and forgery.
- 372.9. Disorderly conduct and breach of the peace.
- 372.10. Escape.
- 372.11. Extortion, threats, stalking, and harassment.
- 372.12. False pretenses and fraud.
- 372.13. Gambling offenses.
- 372.14. Homicide, mayhem, and assault with intent to kill.
- 372.15. Infants and endangered persons, offenses specific to.
- 372.16. Kidnapping and false imprisonment.
- 372.17. Larceny, embezzlement, and receiving stolen property.
- 372.18. Liquor offenses.
- 372.19. Motor vehicle offenses.
- 372.20. Obscenity and lewdness.

**110. CRIMINAL LAW****XVII. EVIDENCE.**(Cont'd)

- 372.21. Obstructing justice, bribery, and perjury.
- 372.22. Robbery.
- 372.23. Sex offenses, incest, and prostitution.
- 372.24. Tax and internal revenue offenses.
- 372.25. Weapons and explosives.
- 372.26. Other particular offenses.
- 372.27. Multiple offenses.

**10. OTHER MISCONDUCT SHOWING IDENTITY.**

- 372.28. In general.
- 372.29. Arson and malicious mischief.
- 372.30. Assault and battery.
- 372.31. Burglary and trespass.
- 372.32. Conspiracy, racketeering, and money laundering.
- 372.33. Controlled substances.
- 372.34. Counterfeiting and forgery.
- 372.35. Disorderly conduct and breach of the peace.
- 372.36. Escape.
- 372.37. Extortion, threats, stalking, and harassment.
- 372.38. False pretenses and fraud.
- 372.39. Gambling offenses.
- 372.40. Homicide, mayhem, and assault with intent to kill.
- 372.41. Infants and endangered persons, offenses specific to.
- 372.42. Kidnapping and false imprisonment.
- 372.43. Larceny, embezzlement, and receiving stolen property.
- 372.44. Liquor offenses.
- 372.45. Motor vehicle offenses.
- 372.46. Obscenity and lewdness.
- 372.47. Obstructing justice, bribery, and perjury.
- 372.48. Robbery.
- 372.49. Sex offenses, incest, and prostitution.
- 372.50. Tax and internal revenue offenses.
- 372.51. Weapons and explosives.
- 372.52. Other particular offenses.
- 372.53. Multiple offenses.

**11. OTHER PARTICULAR THEORIES OF ADMISSIBILITY.**

- 372.54. In general.
- 372.55. Showing background; explaining matters in evidence.

**XVII. EVIDENCE.**(Cont'd)

- 372.56. Controverting defense evidence or theory.
- 372.57. Mental capacity.
- 372.58. Showing opportunity.
- 372.59. Showing relationship between defendant and others.
- 372.60. Explaining conduct of officers, investigators, and other officials.
- 372.61. Explaining conduct of victims and witnesses.

**12. NATURE AND CIRCUMSTANCES OF OTHER MISCONDUCT AFFECTING ADMISSIBILITY.**

- 373.1. In general.
- 373.2. What constitutes other misconduct.
- 373.3. Conduct not amounting to crime, or evidence merely suggestive of crime.
- 373.4. — In general.
- 373.5. — Gang membership.
- 373.6. — Juvenile misconduct.
- 373.7. Similarity to crime charged.
- 373.8. — In general.
- 373.9. — Controlled substance offenses.
- 373.10. — Sex offenses.
- 373.11. — Weapons offenses.
- 373.12. — Other particular offenses.
- 373.13. — Similar victims.
- 373.14. — Same or identical victims.
- 373.15. — Similar means or method; *modus operandi*.
- 373.16. — Attempts.
- 373.17. Geographic proximity.
- 373.18. Temporal relation of events.
- 373.19. — In general.
- 373.20. — Close temporal proximity.
- 373.21. — Remoteness.
- 373.22. — Misconduct subsequent to charged offense.
- 373.23. Conduct barred from prosecution by limitations.
- 373.24. — In general.
- 373.25. — Continuing offenses.
- 373.26. Number of other acts.
- 373.27. Subsequent circumstances.
- 373.28. — In general.
- 373.29. — Acquittal.
- 373.30. — Dismissal or mistrial.
- 373.31. — Reversal.

**110. CRIMINAL LAW****13. PROOF AND EFFECT.**

- 374.1. In general.
- 374.2. Notice and disclosure.
- 374.3. — In general.
- 374.4. — Necessity.
- 374.5. — Request or demand for notice, necessity and sufficiency.
- 374.6. — Sufficiency of notice; time for giving.
- 374.7. — Failure to give notice.
- 374.8. — Excuses.
- 374.9. — Sanctions.
- 374.10. Objections and motions.
- 374.11. — In general.
- 374.12. — Time.
- 374.13. — Form and sufficiency.
- 374.14. — Effect of failure to object.
- 374.15. Preliminary evidence.
- 374.16. — In general.
- 374.17. — Burden of proof.
- 374.18. — Offer of proof.
  - (1). In general.
  - (2). Identifying purpose for which evidence is offered.
- 374.19. — Proof of other misconduct.
  - (1). In general; necessity.
  - (2). Degree of proof.
  - (3). Sufficiency.
- 374.20. — Proof of defendant's commission of or connection with other misconduct.
  - (1). In general; necessity.
  - (2). Degree of proof.
  - (3). Sufficiency.
- 374.21. Determination of admissibility.
- 374.22. — In general.
- 374.23. — Hearing.
- 374.24. — Findings and statement of reasons.
- 374.25. — Decision or order.
- 374.26. Manner of proving other misconduct.
- 374.27. Order of proof.
- 374.28. — In general.
- 374.29. — Rebuttal.
- 374.30. Effect of admitting or excluding evidence.
- 374.31. — In general.
- 374.32. — Right of accused to present evidence in response.

**(G) CHARACTER OF ACCUSED.**

- 375. Character or reputation of accused.
- 376. — In general.
- 377. — Good character as evidence for defense.
- 378. — Rebuttal of evidence of good character.
- 379. — General reputation.
- 380. — Particular acts.
- 381. — Weight and effect of evidence.

**(H) MATERIALITY.**

*See also CONSTITUTIONAL LAW* ¶4654–4671.

- 382. Materiality in general.
- 383. Importance or certainty of evidence.
- 384. Remoteness of evidence.

**(I) COMPETENCY IN GENERAL.**

- 385. Competency in general.
- 386. Nature and source of evidence.
- 387. Negative testimony.
- 388. Experiments and tests; scientific and survey evidence.

*Excludes sobriety tests administered to motorists, see AUTOMOBILES* ¶411–426; *scientific evidence as basis for experts' opinions, see CRIMINAL LAW* ¶488; *and use of statistical studies in particular pretrial proceedings, see CRIMINAL LAW* ¶134 *for use in change of venue proceedings and JURY* ¶33 *for use in jury selection proceedings.*

- 388.1. — In general.
- 388.2. — Particular tests or experiments.
- 388.3. — Foundation or authentication in general.
- 388.4. — Speed; radar.
  - (1). In general.
  - (2). Competency of technician or witness.
  - (3). Reliability of particular testing devices.
- 388.5. — Lie detector or polygraph tests and procedures.

*Excludes right to be tested or to compel testing of others, see CRIMINAL LAW* ¶627.1; *impeachment with evidence of unwillingness to submit to testing, see WITNESSES* ¶344(1); *and corroboration with evidence of willingness to submit to testing, see WITNESSES* ¶318 and 414(1).

- (1). In general.
- (2). Stipulations or agreements.
- (3). — In general.
- (4). — Necessity and effect.
- (5). — Validity.
- (6). — Form and requisites.



**110. CRIMINAL LAW****XVII. EVIDENCE.**(Cont'd)

- (7). — Construction.
- (8). — Compliance with terms.
- (9). — Withdrawal.
- (10). Conclusiveness of results, admissibility dependent upon.
- (11). Test procedures; competency of technician.
- (12). Willingness of defendant to submit to test.
- (13). Fact of taking test.
- 388.10. — Drug or truth serum tests.
- 389. Evidence not presented to grand jury.
- 390. Testimony as to intent or motive.
- 391. Excuse for failure of accused to testify.
- 392. Excuse for failure to call witness or produce evidence.
- 392.1. Wrongfully obtained evidence.
- 392.2. — In general.
- 392.3. — Irrelevance of acquisition by improper means.
  - (1). In general.
  - (2). Searches, seizures, and arrests.
- 392.4. — Exclusionary rule in general.
  - (1). In general.
  - (2). Searches, seizures, and arrests.
- 392.5. — Purpose of exclusionary rule.
  - (1). In general.
  - (2). Searches, seizures, and arrests.
- 392.6. — Exclusionary rule as a personal or individual right.
- 392.7. — State or federal law.
- 392.8. — Foreign law.
- 392.9. — Nature of misconduct warranting suppression in general.
- 392.10. — Necessity of constitutional violation in general.
  - (1). In general.
  - (2). Searches, seizures, and arrests.
- 392.11. — Evidence obtained in violation of statute or treaty in general.
- 392.12. — Evidence obtained in violation of rules or regulations in general.
- 392.13. — Persons procuring or providing evidence.
  - (1). In general.
  - (2). Private persons; necessity of state action.
  - (3). Informants; agents of police or prosecution.

**XVII. EVIDENCE.**(Cont'd)

- (4). Evidence procured by foreign agents.
- (5). Evidence procured by federal agents, in state prosecutions.
- (6). Evidence procured by state or territorial agents, in federal prosecutions.
- (7). Joint venture doctrine; agency.
- (8). Cooperation among units of same government.
- (9). Evidence obtained by parties in civil proceedings.
- 392.14. — Searches and seizures in general.
- 392.15. — Search or seizure without warrant in general.
  - (1). In general.
  - (2). Probable cause for search without warrant.
  - (3). Plain view in general.
  - (4). Particular places or things searched or seized without warrant.
  - (5). — In general.
  - (6). — Search of home or residence.
  - (7). — Hotel, motel, or other temporary residence.
  - (8). — Place of business or other premises.
  - (9). — Vehicles, boats, planes.
  - (10). — Inventory searches.
  - (11). — Persons; identity.
  - (12). — Other particular places or things.
  - (13). — Abandoned property.
- 392.16. — Search or seizure under warrant.
  - (1). In general.
  - (2). Affidavit or complaint; probable cause.
  - (3). Form and requisites of warrant.
  - (4). Neutral and detached official issuing warrant.
  - (5). Execution and return of warrant.
  - (6). Knock and announce requirement.
  - (7). Federal-state warrant issues.
- 392.17. — Stop or arrest.

**110. CRIMINAL LAW****XVII. EVIDENCE.**(Cont'd)

- (1). In general.
- (2). Search or seizure following arrest in general.
- (3). Search or seizure following investigatory stop.
- (4). Arrest under warrant.
- (5). — In general.
- (6). — Execution.
- 392.18. — Knock or announcement prior to entry or search.
- 392.19. — Delay in arraignment, hearing, or presentment to magistrate.
- 392.20. — Denial of timely telephone call or other communication following arrest.
- 392.21. — Electronic surveillance; telecommunications.
- 392.22. — Violations of right to counsel.
- 392.23. — Traffic regulation; speed traps, roadblocks, vehicular markings, and uniforms.
- 392.24. — Violation of privilege.
- 392.25. — Equal protection and due process violations.
- 392.26. — Privacy in general.
- 392.27. — Health, tax, or financial records.
- 392.28. — Subpoenas, violation of sealing order.
- 392.29. — Perjury by police or agents of prosecution.
- 392.30. — Posse comitatus violations.
- 392.31. — Particular treaties or conventions.
- 392.32. — Miscellaneous government misconduct or mischief in procurement of evidence in general.
  - (1). In general.
  - (2). Attorney discipline rule violation or other misconduct.
  - (3). Delay.
  - (4). Trespass, spying, eavesdropping, or deceit.
  - (5). Entrapment.
  - (6). Violence or coercion.
  - (7). Violation of particular statutes.
  - (8). Improper government agency investigative methods.
- 392.33. — Proceeding unrelated to misconduct or investigation.

**XVII. EVIDENCE.**(Cont'd)

- 392.34. — Subsequent illegality; admissibility of evidence whose acquisition is initially proper.
- 392.35. — Return of property; adversary hearing for obscene material.
- 392.36. — Invocation of exclusionary rule protection by alleged perjurer.
- 392.37. — Operation and extent of, and exceptions to, the exclusionary rule in general.
- 392.38. — Good faith or objectively reasonable conduct doctrine.
  - (1). In general.
  - (2). Applicability when no warrant sought or yet obtained.
  - (3). Necessity of significant investigation and review by trained person.
  - (4). Reliance on statute, ordinance, or precedent; mistake of law.
  - (5). Apparent authority in general.
  - (6). Exceptions relating to defects in warrant.
  - (7). — In general.
  - (8). — Deliberately or recklessly false affidavit.
  - (9). — Abandonment of judicial role or lack of neutrality.
  - (10). — Lack of indicia of probable cause; “bare bones” affidavits.
  - (11). — Lack of particularity as to place or object.
  - (12). — Particular cases.
  - (13). Applicability when police or warrant violate rule or statute.
  - (14). Arrests and stops.
  - (15). Electronic surveillance cases.
- 392.39. — Extent of exclusion; “fruit of the poisonous tree”.
  - (1). In general.
  - (2). Search or seizure in general.
  - (3). Search under warrant.
  - (4). Electronic eavesdropping.
  - (5). Investigatory stop, and search or seizure thereafter.
  - (6). Arrest, and search or seizure thereafter.
  - (7). Arrest under warrant, and search or seizure thereafter.

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- (8). Exceptions.
- (9). — In general; multiple factors.
- (10). — Attenuation or dissipation purging taint.
- (11). — Causal nexus; independent discovery or basis or source.
- (12). — Inevitable discovery.
- 392.40. — Objections to admission of evidence.
- 392.41. — Persons entitled to object.
- 392.42. — Waiver of objections by conduct at time near alleged impropriety.
  - (1). In general.
  - (2). Consent.
  - (3). — In general.
  - (4). — Necessity of warning to obtain valid consent.
  - (5). — Consent by person other than the accused.
  - (6). — Validity of consent in light of prior misconduct.
- 392.43. — Proceedings in general.
- 392.44. — Discretion and power of trial court.
- 392.45. — Notice of intent to seek to suppress evidence.
- 392.46. — Motions.
  - (1). In general.
  - (2). Adequacy; waiver by failure to include issue in motion.
  - (3). Time for filing; waiver for failing to file or to timely file.
  - (4). Motion papers, affidavits; sworn statements.
  - (5). Necessity of renewal of motion at trial; necessity of objection at trial.
- 392.47. — Response or answer to motion.
  - (1). In general.
  - (2). Duty to respond vel non.
  - (3). Waiver by prosecution; failure to respond or to timely respond.
- 392.48. — Production of search warrant by prosecution.
- 392.49. — Evidence on motions.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Weight and sufficiency.

**XVII. EVIDENCE.**(Cont'd)

- (4). — In general.
- (5). — Consent.
- (6). — Abandonment.
- (7). — Warrant requirements; probable cause.
- (8). — Good faith.
- (9). — Wiretaps; electronic surveillance.
- (10). Degree of proof.
- 392.50. — Right to, and necessity of, hearing or voir dire examination; summary disposition.
- 392.51. — Conduct of hearing in general.
- 392.52. — Time for hearing; continuance.
- 392.53. — Advising accused as to his rights.
- 392.54. — Trial judge as sole arbiter of credibility.
- 392.55. — Questions of law or fact.
- 392.56. — Determinative process; matters or issues considered.
- 392.57. — Deference to judicial officer issuing warrant; conclusiveness of warrant.
- 392.58. — Findings and conclusions.
  - (1). In general.
  - (2). Necessity.
  - (3). Sufficiency, consistency.
- 392.59. — Order; determination.
- 392.60. — Time for making findings or order.
- 392.61. — Remedy of partial suppression.
- 392.62. — Rehearing or reopening.
- 392.63. — Operation and effect of determination.
- 393. Compelling self-incrimination.
  - (1). In general.
  - (2). Introduction of articles taken from accused.
  - (3). Exposing accused or person of accused to view of witness or jury, and compelling submission to physical examination.
  - (4). Comparison of accused's shoes with footprints at scene of offense.
- 396. Evidence admissible by reason of admission of similar evidence of adverse party.

**110. CRIMINAL LAW****XVII. EVIDENCE.**(Cont'd)

- (1). In general.
  - (2). Admission of whole conversation, transaction, or instrument because of admission of part or reference thereto.
397. Evidence inadmissible by reason of exclusion of similar evidence of adverse party.

**(J) BEST AND SECONDARY EVIDENCE.**

398. Necessity and admissibility of best evidence in criminal prosecutions.
- (1). In general.
  - (2). Admissibility of secondary evidence.
399. Record or other writing as best evidence.
400. — In general.
- (1). In general.
  - (2). Judicial acts, proceedings, and records.
  - (3). Official acts, proceedings, and records.
  - (4). Unofficial records in general.
  - (5). Family records.
  - (6). Corporate acts, proceedings, and records.
  - (7). Conveyances, contracts, and other instruments.
  - (8). Books of account.
  - (9). Private memoranda and statements.
  - (10). Letters, telegrams, and other correspondence.
  - (11). Inscriptions, labels, names, and marks.
401. — Writings collateral to issues.
402. Preliminaries to admission of secondary evidence.
- (1). In general.
  - (2). Notice to opposite party to produce original instrument.
403. Character of secondary evidence.

**(K) DEMONSTRATIVE EVIDENCE.**

*Excludes experiments and tests in court, see ¶650, post. Issues concerning the exhibition to jury of articles, etc., not introduced, see ¶663, post. Many cases in this subdivision were formerly classified at ¶404(1–5).*

- 404.5. In general.

**XVII. EVIDENCE.**(Cont'd)

- 404.10. Foundation or authentication.
- 404.11. — In general.
- 404.15. — Identification of object.
- 404.20. — Condition; change; tampering.
- 404.25. — Connection with crime or party.
- 404.30. — Chain of custody.
- 404.35. Particular objects.
- 404.36. — In general.
- 404.40. — Objects used for identification.
- 404.45. — Exhibition of person or body parts; samples.
- 404.50. — Instruments or devices used, or suspected of use, in commission of crime.
- 404.55. — Articles subject of offenses.
- 404.60. — Drugs or narcotics and related objects.
- 404.65. — Weapons and related objects.
- 404.70. — Clothing.
- 404.75. — Stolen goods.
- 404.80. — Replicas and models; objects similar to or illustrative of others.
- 404.85. — Writings submitted for comparison.

**(L) STATEMENTS, CONFESSIONS, AND ADMISSIONS IN GENERAL.**

*See also CONSTITUTIONAL LAW ¶4661.*

- 405.1. In general.
- 405.2. What constitutes an admission.
- 405.3. What constitutes a confession.
- 405.4. Admissions by party opponent.
- 405.5. Adoptive admissions; silence.
- 405.6. Admissions by agents or representatives.
- 405.7. — In general.
- 405.8. — Prosecution.
- 405.9. Statements by victim.
- 405.10. — In general.
- 405.11. — Statements against interest.
- 405.12. — Substantive use of statements corroborating or impeaching testimony.
- 405.13. — Admissibility as affected by presence or nonpresence of accused.
- 405.14. Statements by third parties.
- 405.15. — In general.
- 405.16. — Voluntariness.

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- 405.17. — Effect of prior illegality.
- 405.18. — Statements against interest.
  - (1). In general.
  - (2). Particular cases.
- 405.19. — Substantive use of statements corroborating or impeaching testimony.
- 405.20. — Statements as to pedigree, birth, and relationship.
- 405.21. — Statements by persons engaged in investigating or prosecuting offense.
- 405.22. — Admissibility as affected by presence or nonpresence of accused.
- 405.23. Statements under hypnosis or influence of drugs.

**(M) STATEMENTS, CONFESSIONS, AND ADMISSIONS BY OR ON BEHALF OF ACCUSED.****1. IN GENERAL.**

- 410.1. In general.
- 410.2. What constitutes an admission.
- 410.3. What constitutes a confession.
- 410.4. What constitutes a statement or declaration.
- 410.5. Admissibility in general.
- 410.6. — In general.
- 410.7. — Consciousness of guilt.
- 410.8. — Particular cases.

**2. HEARSAY.**

- 410.10. In general.
- 410.11. Admissions by party opponent.
- 410.12. — In general.
- 410.13. — Particular cases.
- 410.14. Statements against interest.
- 410.15. — In general.
- 410.16. — Particular cases.

**3. JUDICIAL ADMISSIONS AND CONFESSIONS.**

- 410.20. In general.
- 410.21. Judicial admissions.
- 410.22. — In general.
- 410.23. — Plea of guilty or nolo contendere.
- 410.24. — In civil proceedings.
- 410.25. Judicial confessions.

**4. ADOPTIVE ADMISSIONS; SILENCE.**

- 410.30. In general.
- 410.31. Conduct in general.
- 410.32. Silence.
- 410.33. — In general.
- 410.34. — Coconspirators' statements.
- 410.35. — Opportunity for or necessity of responding.
- 410.36. — Post-arrest silence; custody.

**5. ADMISSIONS BY AGENTS OR REPRESENTATIVES.**

- 410.40. In general.
- 410.41. Counsel for accused.

**6. NEGOTIATIONS FOR COMPROMISE.**

- 410.45. In general.
- 410.46. Plea negotiations and offers to plead guilty.
- 410.47. — In general.
- 410.48. — Persons to whom made.
- 410.49. — Particular cases.
- 410.50. Offers to compromise with victim; civil settlements.

**7. RECORDING, NECESSITY OF.**

- 410.55. In general.

**8. MISCELLANEOUS TYPES OF STATEMENTS.**

- 410.60. In general.
- 410.61. Written statement, confession, or admission.
- 410.62. — In general.
- 410.63. — Necessity.
- 410.64. — Sufficiency.
- 410.65. — Signature.
- 410.66. — Translation.
- 410.67. Statements asserting constitutional rights.
- 410.68. Statements constituting offense.
- 410.69. Self-serving statements.
- 410.70. — In general.
- 410.71. — Particular cases.

**9. VOLUNTARINESS IN GENERAL.**

- 410.75. In general.
- 410.76. Necessity of showing voluntary character.
- 410.77. What constitutes voluntary statement, admission, or confession.

**110. CRIMINAL LAW****XVII. EVIDENCE.**(Cont'd)

- 410.78. Particular cases.
- 410.79. Physical condition.
- 410.80. — In general.
- 410.81. — Restraints.
- 410.82. — Sleep deprivation.
- 410.83. — Lack of food or beverages.
- 410.84. Mental incapacity.
- 410.85. — In general.
- 410.86. — Particular cases.
- 410.87. Intoxication.
- 410.88. — In general.
- 410.89. — Particular cases.
- 410.90. Age.
- 410.91. Education.
- 410.92. Experience with legal system.
- 410.93. Knowledge of language; translation.

**10. WARNINGS.**

- 411.1. In general.
- 411.2. Purpose.
- 411.3. Necessity in general.
- 411.4. Custodial interrogation in general.
- 411.5. Accusatory stage of proceedings.
- 411.6. Investigations in foreign countries.
- 411.7. Form and sufficiency.
- 411.8. Translation.
- 411.9. Repetition.
- 411.10. Right to remain silent.
- 411.11. Right to counsel.
- 411.12. Offenses under investigation.
- 411.13. Vienna Convention rights.
- 411.14. Use of statement.

**11. CUSTODY.**

- 411.20. In general.
- 411.21. What constitutes custody.
- 411.22. — In general.
- 411.23. — Warnings.
- 411.24. — Particular cases or issues.
- 411.25. — Investigatory stops.
- 411.26. — Traffic stops.

**12. COUNSEL IN GENERAL.**

- 411.30. In general.
- 411.31. Absence or denial of counsel.

**13. INTERROGATION IN GENERAL.**

- 411.35. In general.

**XVII. EVIDENCE.**(Cont'd)

- 411.36. What constitutes interrogation.
- 411.37. — In general.
- 411.38. — Warnings.
- 411.39. — Particular cases or questions.
- 411.40. — Booking or biographical questions.
- 411.41. — Public safety or rescue.

**14. CONDUCT OF INTERROGATION.**

- 411.45. In general.
- 411.46. Admonition to tell the truth in general.
- 411.47. Particular cases.
- 411.48. Coercion.
- 411.49. — In general.
- 411.50. — Particular cases.
- 411.51. Force; physical abuse.
- 411.52. Promises; hope of benefit.
- 411.53. — In general.
- 411.54. — Nature of promise.
  - (1). In general.
  - (2). Promise of leniency in general.
  - (3). Promises not to prosecute accused.
  - (4). Promises not to prosecute others.
  - (5). Promises as to sentence.
- 411.55. — Private persons, promises by.
- 411.56. Threats; fear of injury.
- 411.57. — In general.
- 411.58. — Threats to third persons.
- 411.59. Deception.
- 411.60. — In general.
- 411.61. — Representations as to physical evidence.
- 411.62. — Representations as to statements of others.

**15. PERSONS TO WHOM MADE.**

- 411.65. In general.
- 411.66. Private persons in general.
- 411.67. Informants; inmates.
- 411.68. Agents or officers from other jurisdiction.
- 411.69. Coconspirators, codefendants, and accomplices.
- 411.70. Statements in connection with polygraph examination.

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411.71. Statements in connection with mental examination.

**16. INVOCATION OF RIGHTS.**

- 411.75. In general.  
 411.76. Right to remain silent.  
 411.77. — In general.  
 411.78. — Particular cases.  
 411.79. Counsel.  
 411.80. — In general.  
 411.81. — Particular cases.  
 411.82. Effect of invocation.  
 411.83. — In general.  
 411.84. — Right to remain silent.  
 411.85. — Counsel.  
 411.86. — Reinitiating interrogation.  
     (1). In general.  
     (2). Subject matter in general.  
     (3). Clarification of invocation.  
     (4). Other offenses.  
     (5). Lapse of time.  
     (6). Initiation by defendant.

**17. WAIVER OF RIGHTS.**

- 411.90. In general.  
 411.91. Necessity.  
 411.92. Form and sufficiency in general.  
 411.93. Right to remain silent.  
 411.94. Counsel.  
 411.95. Particular cases.  
 411.96. — In general.  
 411.97. — Right to remain silent.  
 411.98. — Counsel.  
 411.99. Effect; revocation.

**18. EFFECT OF PRIOR ILLEGALITY.**

- 413.1. In general.  
 413.2. Prior statement.  
 413.3. — In general.  
 413.4. — Purging taint in general.  
 413.5. — Two-step interrogation technique; warnings.  
 413.6. — Delay between initial statement and resumption of interrogation.  
 413.7. Illegal arrest or detention.  
 413.8. — In general.  
 413.9. — Purging taint in general.  
 413.10. — Warnings.

**XVII. EVIDENCE.**(Cont'd)

- 413.11. — Lapse of time.  
 413.12. — Particular cases.  
 413.13. Illegal search or seizure.  
 413.14. Delay in arraignment or initial appearance.  
 413.15. — In general.  
 413.16. — Particular cases.

**19. DETERMINATION OF ADMISSIBILITY OF STATEMENT, CONFESSION, OR ADMISSION.**

- 413.20. In general.  
 413.21. Notice.  
 413.22. Disclosure or production of copy of, or witnesses to, confession, statement, or admission.  
 413.23. Necessity of preliminary proof in general.  
 413.24. Discretion in general.  
 413.25. Motions.  
 413.26. — In general.  
 413.27. — Necessity.  
 413.28. — Time for motion.  
 413.29. — Form and sufficiency.  
 413.30. Presumptions and burden of proof.  
 413.31. — In general.  
 413.32. — Voluntariness.  
 413.33. — Warnings.  
 413.34. — Counsel.  
 413.35. — Custody.  
 413.36. — Invocation of rights.  
 413.37. — Waiver of rights.  
 413.38. Admissibility of evidence.  
 413.39. — In general.  
 413.40. — Hearsay.  
 413.41. Degree of proof.  
 413.42. — In general.  
 413.43. — Voluntariness.  
 413.44. — Warnings.  
 413.45. — Counsel.  
 413.46. — Custody.  
 413.47. — Invocation of rights.  
 413.48. — Waiver of rights.  
 413.49. Weight and sufficiency of evidence.  
 413.50. — In general.  
 413.51. — Voluntariness.  
 413.52. — Warnings.  
 413.53. — Counsel.  
 413.54. — Custody.

**110. CRIMINAL LAW****XVII. EVIDENCE.**(Cont'd)

- 413.55. — Invocation of rights.
- 413.56. — Waiver of rights.
- 413.57. Hearing.
- 413.58. — In general.
- 413.59. — Necessity.
- 413.60. — Time for hearing.
- 413.61. — Conduct of hearing.
- 413.62. — Questions of law and fact.
- 413.63. — Findings.
- 413.64. Rehearing.
- 413.65. Determination; ruling or order.
- 413.66. Order of proof.

**20. CORROBORATION.**

- 413.70. In general.
- 413.71. Necessity.
- 413.72. — In general.
- 413.73. — Corpus delicti.
- 413.74. — Admissions.
- 413.75. — Confessions.
- 413.76. Sufficiency.
- 413.77. — In general.
- 413.78. — Corpus delicti.
- 413.79. — Admissions.
- 413.80. — Confessions.
- 413.81. — Particular cases.
  - (1). In general.
  - (2). Arson and malicious mischief.
  - (3). Assault and battery.
  - (4). Burglary and trespass.
  - (5). Conspiracy, racketeering, and money laundering.
  - (6). Controlled substances.
  - (7). Counterfeiting and forgery.
  - (8). Disorderly conduct and breach of the peace.
  - (9). Escape.
  - (10). Extortion, threats, stalking, and harassment.
  - (11). False pretenses and fraud.
  - (12). Gambling offenses.
  - (13). Homicide, mayhem, and assault with intent to kill.
  - (14). Infants and endangered persons, offenses specific to.
  - (15). Kidnapping and false imprisonment.

**XVII. EVIDENCE.**(Cont'd)

- (16). Larceny, embezzlement, and receiving stolen property.
- (17). Liquor offenses.
- (18). Motor vehicle offenses.
- (19). Obscenity and lewdness.
- (20). Obstructing justice, bribery, and perjury.
- (21). Robbery.
- (22). Sex offenses, incest, and prostitution.
- (23). Tax and internal revenue offenses.
- (24). Weapons and explosives.
- (25). Other particular offenses.
- (26). Multiple offenses.

**21. EFFECT OF ADMISSION OF STATEMENT, CONFESSION, OR ADMISSION.**

- 413.85. In general.
- 413.86. Redaction.
- 413.87. Rule of completeness.
- 413.88. — In general.
- 413.89. — Self-serving statements.

**22. WEIGHT AND SUFFICIENCY TO CONVICT.**

- 413.90. In general.
- 413.91. Corroboration.
- 413.92. — In general.
- 413.93. — Corpus delicti.
- 413.94. Particular cases.
  - (1). In general.
  - (2). Arson and malicious mischief.
  - (3). Assault and battery.
  - (4). Burglary and trespass.
  - (5). Conspiracy, racketeering, and money laundering.
  - (6). Controlled substances.
  - (7). Counterfeiting and forgery.
  - (8). Disorderly conduct and breach of the peace.
  - (9). Escape.
  - (10). Extortion, threats, stalking, and harassment.
  - (11). False pretenses and fraud.
  - (12). Gambling offenses.
  - (13). Homicide, mayhem, and assault with intent to kill.
  - (14). Infants and endangered persons, offenses specific to.



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- (15). Kidnapping and false imprisonment.
- (16). Larceny, embezzlement, and receiving stolen property.
- (17). Liquor offenses.
- (18). Motor vehicle offenses.
- (19). Obscenity and lewdness.
- (20). Obstructing justice, bribery, and perjury.
- (21). Robbery.
- (22). Sex offenses, incest, and prostitution.
- (23). Tax and internal revenue offenses.
- (24). Weapons and explosives.
- (25). Other particular offenses.
- (26). Multiple offenses.

**23. USE IN DIFFERENT PROCEEDINGS.**

413.95. In general.

**24. USE OF EVIDENCE OBTAINED BY MEANS OF STATEMENT, CONFESSION, OR ADMISSION.**

413.96. In general.

**(N) HEARSAY.**

419. Hearsay in general.

- (1). In general.
- (1.5). Particular determinations, hearsay inadmissible.
- (1.10). Exceptions to hearsay rule, and non-hearsay distinguished in general.
- (2). Evidence as to fact of making declarations and not as to subject-matter.
- (2.5). "Catch-all" or residual exception.
- (2.10). Acts or conduct.
- (2.15). Present sense impression.
- (2.20). Then-existing state of mind or body.
- (2.25). Judgments or orders.
- (2.30). Matters within witness' knowledge or observation; witness' own statements or conduct.
- (2.35). Others' opinions or test results.
- (2.40). Evidence showing intent, motive, or nature of act.

**XVII. EVIDENCE.**(Cont'd)

- (2.45). Evidence as to predisposition.
- (3). Evidence as to information acted on.
- (4). Statements of witnesses or persons available as witnesses.
- (5). Statements of persons not available as witnesses.
- (6). Statements of persons since deceased.
- (7). Statements made through interpreter.
- (8). Statements by third persons as to declarations or admissions by accused.
- (9). Statements of third persons communicated by accused to person injured.
- (10). Oral statements in general.
- (11). Conversations with third persons.
- (12). Written statements.
- (13). Double hearsay.
- (14). Notice; determination of admissibility.

421. Evidence founded on hearsay.

- (1). In general.
- (2). Name.
- (3). Age.
- (4). Insanity.
- (5). Warnings.
- (6). Identity.

**(O) ACTS AND DECLARATIONS OF CONSPIRATORS AND CODEFENDANTS.**

422. Grounds of admissibility in general.

- (1). In general.
- (2). Conviction, acquittal, or guilty plea of another for same offense.
- (3). Prior to conspiracy.
- (4). Motive of accomplice or motive for conspiracy.
- (5). Declarations against interest.
- (6). In absence or out of hearing of accused.
- (7). Admissibility of declarations of coconspirator as affected by acquittal of declarant.
- (8). In presence of codefendant or coconspirator.

**110. CRIMINAL LAW****XVII. EVIDENCE.**(Cont'd)

- (9). Admissibility as against declarant in joint prosecution.
- 423. Furtherance or execution of common purpose.
  - (1). In general.
  - (2). Absence of coconspirators.
  - (3). Character of acts or declarations.
  - (4). Acts and declarations of conspirators not indicted or not on trial.
  - (5). Acts and declarations during actual commission of crime.
  - (6). Acts and declarations not in furtherance of common purpose.
  - (7). Persons whose acts and declarations are admissible as those of conspirators and codefendants.
  - (8). Acts and declarations made prior to formation of conspiracy.
  - (9). Acts and declarations after commission of crime but before complete fulfillment of purpose.
- 424. After accomplishment of object.
  - (1). In general.
  - (2). In presence of codefendant or coconspirator.
  - (3). In absence of coconspirator or codefendant.
  - (4). Joint trial.
  - (5). Acts or declarations forming part of res gestae.
  - (6). Flight of coconspirators or codefendants.
- 425. Statements as to past acts or transactions.
- 425.5. Confessions.
- 426. Self-serving acts or declarations.
- 427. Preliminary evidence as to conspiracy or common purpose.
  - (1). In general; existence of conspiracy.
  - (2). Necessity in general.
  - (3). Order of proof.
  - (4). Competency.
  - (5). Weight and sufficiency.
- 428. Proof and effect of acts or declarations.
- (P) DOCUMENTARY EVIDENCE.**
- 429. Public or official acts, proceedings, records, and certificates.

**XVII. EVIDENCE.**(Cont'd)

- (1). In general.
- (2). Judicial acts, proceedings, and records.
- (3). Printed statutes and copies of legislative acts.
- 430. Exemplifications, transcripts, and certified copies.
- 431. Private writings and publications.
- 432. — In general.
- 433. — Letters and telegrams.
- 434. — Books and entries therein.
- 435. — Memoranda; past recollection recorded.
- 436. — Registers and records.
  - (1). In general.
  - (2). Business records in general.
  - (3). Particular records.
  - (4). Hotel or motel records.
  - (5). Medical and hospital records.
  - (6). Computer records; printouts.
  - (7). Telephone records.
- 437. — Maps, plats, and diagrams.
- 438. — Photographs and other pictures.
  - (1). In general.
  - (2). Particular prosecutions.
  - (3). Pictures of accused or others; identification evidence.
  - (4). Depiction of places; scene of crime.
  - (5). Depiction of injuries or dead bodies.
  - (5.1). — In general.
  - (6). — Purpose of admission.
  - (7). Photographs arousing passion or prejudice; gruesomeness.
  - (8). Special types of photographs; enlargements, motion and sound pictures, X-rays.
- 438.1. — Sound recordings.
- 439. — Historical and scientific books.
- 440. Production of records.
- 441. Production of documents.
- 442. Proof of execution of instruments.
- 444. Authentication and foundation.
  - 444.1. — In general.
  - 444.2. — Necessity of authentication or foundation in general.
  - 444.3. — Presumptions and burden of proof.

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- 444.4. — Sufficiency of evidence; standard of proof in general.
- 444.5. — Circumstantial evidence in general.
- 444.6. — Chain of custody in general.
- 444.7. — Strict compliance.
- 444.8. — Self-authenticating evidence in general.
- 444.9. — Business records; books of entry.
- 444.10. — Tax records.
- 444.11. — Medical records.
- 444.12. — Public records in general.
- 444.13. — Court records and transcripts.
- 444.14. — Foreign public or court records.
- 444.15. — Sound recordings.
- 444.16. — Photographs and videos.
- 444.17. — Sketches, diagrams, drawings.
- 444.18. — Letters and notes.
- 444.19. — Statements.
- 444.20. — Telecommunications.
- 444.21. — Motor vehicle or driving records.
- 444.22. — Particular miscellaneous evidence.
- 445. Examined copies.
- 446. Effect of documentary evidence.

**(Q) PAROL EVIDENCE.**

- 447. In general.

**(R) OPINION EVIDENCE.**

- 448. Conclusions and matters of opinion or facts.
  - (1). In general.
  - (2). Facts distinguished from opinions in general.
  - (3). Evidence as to intent, belief, or feelings of accused or other person.
  - (4). Impressions concerning matters not within the personal knowledge of witness.
  - (5). Inferences from failure of witness to observe or know particular fact.
  - (6). Personal characteristics.
  - (7). Nature, condition, relation, and identity of objects and articles.
  - (8). Opinions as to tracks and stains.

**XVII. EVIDENCE.**(Cont'd)

- (9). Space, distance, or time.
- (10). Mental condition or capacity.
- (11). Manner, appearance, and conduct of accused and others.
- (12). Opinions as to meaning and effect of words and acts.
- (13). Opinions embodied in declarations of persons injured.
- (14). Opinions as to cause of difficulty.
- (15). Relations existing between accused and others.
- (16). Questions of law.
- 449. Witnesses in general.
- 449.1. — In general; subjects of opinion evidence.
- 449.2. — Intent, belief, or feelings.
- 450. — Matters directly in issue.
- 451. — Inferences or impressions from collective facts.
  - (1). In general.
  - (2). Opinions based on facts brought out or capable of being brought out in evidence.
  - (3). Manner, appearance, and relations of persons.
  - (4). Opinion as to meaning and effect of words and acts of other person.
- 452. — Special knowledge as to subject-matter.
  - (1). In general.
  - (2). Mental condition or capacity.
  - (3). Identity of persons and things.
  - (4). Handwriting.
- 453. — Personal identity and characteristics.
- 454. — Age.
- 455. — Bodily appearance or condition.
- 456. — Mental condition or capacity.
- 457. — Intoxication.
- 458. — Handwriting.
- 459. — Nature, condition, relation, and identity of objects.
- 460. — Value.
- 461. — Place, space, or distance.
- 462. — Time.
- 463. — Cause and effect.
- 464. — Examination and determination of competency of witness in general.

## 110. CRIMINAL LAW

## XVII. EVIDENCE.(Cont'd)

- 465. — Facts forming basis of opinion.
  - 466. — Cross-examination.
  - 467. — Rebuttal.
  - 468. Subjects of expert testimony.
  - 469. — In general.
  - 469.1. — Aid to jury.
  - 469.2. — Discretion.
  - 469.3. — Questions of law.
  - 470. — Matters directly in issue; ultimate issues.
    - (1). In general.
    - (2). Particular issues.
    - (3). Occurrence of crime; defendant's participation.
  - 471. — Matters of common knowledge or observation in general.
  - 472. — Matters involving scientific or other special knowledge in general.
  - 473. — Bodily condition.
  - 474. — Mental condition or capacity.
  - 474.1. — Intent.
  - 474.2. — Intoxication.
  - 474.3. — Credibility, veracity, or competency.
    - (1). In general.
    - (2). Eyewitnesses.
    - (3). Children.

*Excludes evidence concerning battered or abused child syndrome, see ¶474.4(4) below.*

  - (4). Hypnosis, effect of.
- 474.4. — Character traits or profiles; syndromes.
 

*Excludes use of profile to justify arrest, stop, search or seizure, see ARREST, SEARCHES AND SEIZURES and CONTROLLED SUBSTANCES.*

  - (1). In general.
  - (2). Rape trauma.
  - (3). Battered or abused women, spouses, or domestic partners.
  - (4). Battered or abused children.
  - (5). Character of defendant; predisposition.
- 474.5. — Practices or modus operandi of offenders.
475. — Nature, condition and relation of objects in general.
- 475.1. — Speed.
- 475.2. — Identity or content of substances.
 

*Excludes admissibility of test results, see ¶388–388.10 above.*

## XVII. EVIDENCE.(Cont'd)

- (1). In general.
- (2). Drugs and narcotics.
- (3). Bodily tissue or fluids.
- (4). Blood alcohol.
- (5). Hair.
- 475.3. — Voice identification; linguistics.
- 475.4. — Photographs.
- 475.5. — Fingerprints.
- 475.6. — Footprints.
- 475.7. — Bitemarks.
- 476. — Cause and effect.
- 476.1. — Ballistics and weapons.
- 476.2. — Arson or fires.
- 476.3. — Meaning and effect of words or acts.
- 476.4. — Value.
- 476.5. — Obscenity; community moral standards.
- 476.6. — Miscellaneous matters.
- 477. Competency of experts.
- 477.1. — In general.
- 478. — Knowledge, experience, and skill.
  - (1). In general.
  - (2). Handwriting.
- 479. — Bodily and mental condition.
- 480. — Preliminary evidence as to competency.
- 481. — Determination of question of competency.
- 482. Examination of experts.
- 483. — In general.
- 483.5. — Questions and answers based on facts testified to by expert.
- 484. — Questions and answers based on testimony of others.
- 485. — Hypothetical questions and answers.
  - (1). In general.
  - (2). On issue of mental condition or capacity.
- 486. — Basis of opinion.
  - (1). In general.
  - (2). Necessity and sufficiency.
  - (3). Disclosure, necessity and right.
  - (4). Sources of data.
  - (5). Medical testimony in general.
  - (6). Mental condition.
  - (7). Intoxication.

**110. CRIMINAL LAW****XVII. EVIDENCE.**(Cont'd)

- (8). Identification of persons, things, or substances.
- (9). Value.
- (10). Cause and effect.
- 487. — References to scientific or other authorities.
- 488. — Experiments and results thereof.
- 489. — Cross-examination and redirect examination.
- 490. — Rebuttal.
- 491. Comparison of handwriting.
  - (1). In general.
  - (2). Sufficiency of authentication of standard for comparison of writings.
- 492. Effect of opinion evidence.
- 493. — In general.
- 494. — Experts.

**(S) TESTIMONY OF ACCOMPLICES AND CODEFENDANTS.****1. IN GENERAL.**

- 507. Accomplices within rules of evidence.
  - (1). In general.
  - (2). Knowledge and concealment of crime in general.
  - (3). Accessories after the fact.
  - (4). Detectives and informers.
  - (5). Receiver of stolen goods or thief.
  - (6). Victim of abortion.
  - (7). Participation in sexual crimes.
  - (8). Participation in gaming.
  - (9). Perjury and subornation of perjury.
  - (10). Witness against whom indictment is nolle.
- 507.5. Evidence to show witness to be accomplice.
- 508. Admissibility and effect of testimony.
  - (1). In general.
  - (2). Promise or expectation of immunity or benefit in general.
  - (3). Persons jointly indicted in general.
  - (4). Separate trial of persons jointly indicted.
  - (5). Before disposal of case against witness.
  - (6). After nolle prosequi as to witness.

**XVII. EVIDENCE.**(Cont'd)

- (7). After conviction of or plea of guilty by witness.
- (8). Persons separately indicted.
- (9). Credibility and effect of testimony.

**2. CORROBORATION.**

- 510. Necessity.
- 510.5. Admissibility.
- 511. Sufficiency.
- 511.1. — In general.
  - (1). In general.
  - (2). Quantum of proof required.
  - (2.1). — In general.
  - (3). — Evidence warranting conviction or establishing guilt; suspicion.
  - (4). Scope of corroboration in general.
  - (5). Proof of corpus delicti.
  - (6). Particular offenses.
  - (6.1). — In general.
  - (7). — Homicide; abortion.
  - (8). — Intoxicating liquors; narcotics.
  - (9). — Larceny; burglary; robbery; receiving stolen goods.
  - (10). — Sex offenses.
- 511.2. — Connecting accused with crime.
- 511.3. — Circumstantial evidence.
- 511.4. — Competency and sufficiency of particular facts in general.
- 511.5. — Association of defendant with witness, and presence at or near place of crime.
- 511.6. — Possession of stolen property.
- 511.7. — Admissions and declarations by defendant.
- 511.8. — Previous admission or declaration of witness.
- 511.9. — Testimony of third persons.
- 511.10. — Corroboration by another accomplice.
- 512. Effect.
- (T) CONFESSIONS (OBSOLETE, SEE XVII(L, M, O)).**
- (U) EVIDENCE FROM PRIOR PROCEEDINGS.**
- 539. Admissibility.
  - (1). In general.

**110. CRIMINAL LAW****XVII. EVIDENCE.**(Cont'd)

- (2). Testimony of accused.
- 540. Grounds for admission of former testimony.
- 541. — In general.
- 542. — Death or disability of witness.
- 543. — Absence of witness.
  - (1). In general.
  - (2). Sufficiency of predicate to authorize admission of evidence.
- 544. — Opportunity for cross-examination.
- 545. — Identity of accusation and issues.
- 546. Evidence for or against codefendants.
- 547. Method of proof.
  - (1). In general.
  - (2). Use of notes of stenographer.
  - (3). Parol evidence.
  - (4). Authentication and sufficiency of notes and transcript of testimony.
- 548. Effect.

**(V) WEIGHT AND SUFFICIENCY.**

- 549. Weight and conclusiveness in general.
- 550. Constitutional and statutory provisions.
- 551. Positive and negative evidence.
- 552. Circumstantial evidence.
  - (1). In general.
  - (2). Proof of circumstantial facts.
  - (3). Degree of proof.
  - (4). Relative strength of circumstantial and direct evidence.
- 553. Credibility of witnesses in general.
- 554. Testimony or statement of accused.
- 555. Testimony of interested persons.
- 556. Conclusiveness of evidence on party introducing it.
- 557. Evidence introduced by adverse party.
- 558. Uncontroverted evidence.
- 559. Inferences from evidence.
- 560. Degree of proof.
- 561. Reasonable doubt.
  - (1). In general.
  - (2). In prosecutions for particular offenses.
  - (3). Created by proof of good character.
- 562. Sufficiency to support conviction in general.

**XVII. EVIDENCE.**(Cont'd)

- 563. Corpus delicti.
- 564. Place of commission of offense and venue.
  - (1). In general.
  - (2). Degree of proof.
  - (3). Circumstantial evidence.
  - (4). Proving place of commission by location with respect to private premises.
  - (5). Crime committed in well-known or public locality.
  - (6). Place unknown where some of the acts constituting the crime occurred.
  - (7). Acts constituting crime occurring in different counties.
  - (8). Venue dependent upon location of boundary line of county.
- 565. Time of commission of offense and limitations.
- 566. Identity and characteristics of persons or things.
- 567. Corporate existence and incidents thereof.
- 568. Elements of offenses in general.
- 569. Defenses in general.
- 570. Insanity or other incapacity.
  - (1). In general.
  - (2). Degree of proof.
  - (3). Effect of other determinations or proceedings as to defendant's mental condition.
- 571. Grade or degree of offense.
- 572. Alibi.

**XVIII. TIME OF TRIAL.****(A) DECISIONS PRIOR TO 1967.**

*See also CONSTITUTIONAL LAW* §4612.

- 573. Right to speedy trial in general.
- 574. Constitutional and statutory provisions.
- 575. Time for trial.
- 576. Discharge of accused for delay.
  - (1). In general.
  - (2). Cause for delay.
  - (3). Delay in second trial.
  - (4). Delay caused by accused.
  - (5). Consent to or waiver of delay.
  - (6). Delay in finding or filing indictment or information.

**110. CRIMINAL LAW****XVIII. TIME OF TRIAL.(Cont'd)**

- (7). Failure to hold term of court or impanel jury.
- (8). Previous demand for trial by accused.
- (9). Computation of time with reference to the term at which indictment was found.
- (10). Record entries as to delay.
- (11). Application for discharge.

577. Time for preparation of defense.

**(B) DECISIONS SUBSEQUENT TO 1966.**

*Excludes arrest (see ARREST  67), preliminary examination (see CRIMINAL LAW  228), formal accusation (see INDICTMENTS AND CHARGING INSTRUMENTS  421-433), arraignment (see CRIMINAL LAW  264), judgment (see CRIMINAL LAW  977(3)), sentence (see SENTENCING AND PUNISHMENT  376), probation (see SENTENCING AND PUNISHMENT  1892), probation revocation (see SENTENCING AND PUNISHMENT  2010, 2025).*

- 577.1. In general.
- 577.2. Constitutional and statutory provisions.
- 577.3. Restrictions on delay in general.
- 577.4. Constitutional guarantees; speedy trial in general.
- 577.5. Restrictions under statutes, rules, or plans.
- 577.6. Proceedings subject to time requirements.

*Excludes arrest (see ARREST  67), preliminary examination (see CRIMINAL LAW  228), formal accusation (see INDICTMENTS AND CHARGING INSTRUMENTS  421-433), arraignment (see CRIMINAL LAW  264), judgment (see CRIMINAL LAW  977(3)), sentence (see SENTENCING AND PUNISHMENT  376), probation (see SENTENCING AND PUNISHMENT  1892), probation revocation (see SENTENCING AND PUNISHMENT  2010, 2025).*

- 577.7. Duty of prosecution to proceed to trial.
- 577.8. Computation.
  - (1). In general.
  - (2). Accrual of right to time restraints.
- 577.10. Factors affecting application of requirements in general.
  - (1). In general; balancing test.
  - (2). Circumstances as determinative.
  - (3). Particular or conjunctive circumstances, fulfillment or denial of right.

**XVIII. TIME OF TRIAL.(Cont'd)**

- (4). Cause for delay, "good cause", and excuse or justification in general.
- (5). Multiple charges or defendants.
- (6). Absence of witness.
- (7). Necessities of trial procedure; docket congestion.
- (8). Delay caused by accused.
- (9). Consent to or waiver of delay.
- (10). Demand for trial.

577.11. Status of persons affecting trial time.

- (1). In general; confinement.
- (2). Defendant unavailable.
- (3). Defendant confined for other offense.
- (4). Defendant in custody in another jurisdiction.
- (5). Intrastate detainers; demand and procedure.
- (6). Illness or incompetency of defendant; determination of competency.

577.12. Delay attributable to prosecution.

- (1). In general.
- (2). Deliberate governmental conduct.

577.13. Extension of time.

577.14. Successive, amended, or reinstated charges; successive trials.

577.15. Length of delay.

- (1). In general.
- (2). Subsequent to offense.
- (3). Subsequent to arrest.
- (4). Subsequent to accusation.
- (5). Trial term requirements.

577.16. Relief; dismissal or discharge.

- (1). In general.
- (2). Nature and scope of remedy.
- (3). Discretion.
- (4). Prejudice or absence of prejudice.
- (5). Proceedings.
  - (5.1). — In general.
- (6). — Motion or application.
- (7). — Time for proceeding.
- (8). — Presumptions and burden of proof.
- (9). — Sufficiency of evidence.
- (10). — Hearing and determination.

**110. CRIMINAL LAW****XVIII. TIME OF TRIAL.**(Cont'd)

- (11). — Dismissal with or without prejudice.

**XIX. CONTINUANCE.**

578. Power and duty of court as to continuance.
580. Right of prosecution to continuance.
581. — In general.
582. — In absence of accused.
583. Right of accused to continuance.
584. — In general.
585. — Codefendants.
586. Discretion of court.
587. Successive applications.
588. Grounds for continuance.
589. — In general.
- (1). In general.
- (2). Physical or mental condition of accused or others.
- (3). Procurement of affidavits for change of venue.
- (4). Codefendants.
- (5). Objections to jury.
590. — Want of preparation.
- (1). In general.
- (2). Want of time for preparation by counsel.
591. — Local prejudice.
592. — Absence of party.
593. — Absence of counsel.
594. — Absence of witness or evidence in general.
- (1). In general.
- (2). Witness residing beyond jurisdiction of court.
- (3). Probability of securing testimony.
- (4). Sickness of witness or relatives.
595. — Competency or materiality of expected evidence.
- (.5). In general.
- (1). Materiality of evidence in prosecution for homicide in general.
- (2). Materiality of evidence in prosecution for larceny in general.
- (3). Materiality of evidence in prosecution for rape in general.
- (4). Materiality of evidence in prosecution for other crimes in general.

**XIX. CONTINUANCE.**(Cont'd)

- (5). Affected by issues made by allegations of indictment.
- (6). Evidence to show that crime was committed in self-defense.
- (7). Evidence as to capacity to commit crime.
- (8). Evidence as to character of party.
- (9). Evidence as to alibi.
- (10). Competency in general.
596. — Cumulative or impeaching evidence.
- (1). Cumulative evidence in general.
- (2). Corroborating testimony.
- (3). Impeaching evidence.
597. — Credibility and probable effect of expected testimony.
- (1). In general.
- (2). Evidence contradictory to testimony of accused or to former testimony of witness.
- (3). Evidence not changing result of case.
598. — Diligence.
- (1). In general.
- (2). In procuring witnesses and testimony in general.
- (3). Failure to procure depositions in general.
- (4). In procuring documentary evidence.
- (5). Failure to discover whereabouts of witness.
- (6). Delay in suing out process.
- (7). Failure to sue out process for witness in general.
- (8). Failure to sue out compulsory process for witness.
- (9). Insufficient process.
- (10). Excuses for delay.
599. — Surprise at trial.
600. Admissions to prevent continuance.
- (1). In general.
- (2). Admission of affidavit as testimony of absent witness.
- (3). Admission of expected testimony as true.
- (4). Impeachment of statement after admission.



**110. CRIMINAL LAW****XIX. CONTINUANCE.**(Cont'd)

- (5). Appearance of witness after admission.
- 602. Application and affidavits for continuance.
- 603. — In general.
- 603.1. — Necessity for application.
- 603.2. — Sufficiency of application in general.
- 603.3. — Allegations or averments.
  - (1). In general.
  - (3). Generality of allegations.
  - (4). Truth of expected testimony.
  - (5). Conclusions.
  - (6). Information and belief.
  - (7). Facts expected to be proved by absent witness.
  - (8). The fact cannot be proven otherwise than by absent witness.
  - (9). Probability that testimony will be obtained.
  - (10). Cause of absence.
- 603.4. — Showing of diligence.
- 603.5. — Amendments and supplemental affidavits.
- 605. — Time for making.
- 607. — Notice.
- 608. — Affidavits and other proof.
- 609. — Hearing in general.
- 610. — Presence of accused at hearing.
- 611. — Determination.
- 612. Conditions on granting or refusing continuance.
- 613. Time of continuance.
- 614. Second or further continuance.
  - (1). In general.
  - (2). Cumulative evidence of absent witness.
  - (3). Diligence to procure absent witness.
- 615. Order granting or refusing continuance.
- 616. Operation and effect.
- 617. Objections and exceptions.

**XX. TRIAL.****(A) PRELIMINARY PROCEEDINGS.**

- 618. Condition of prosecution in general.
- 619. Consolidation of proceedings.

**XX. TRIAL.**(Cont'd)

- 620. Joint or separate trial of separate charges.
  - (1). In general.
  - (3). Severance, relief from joinder, and separate trial in general.
  - (3.1). — In general.
  - (4). — Discretion of court.
  - (5). — Grounds.
  - (6). — Particular cases.
  - (7). — Proceedings; waiver.
- 621. Order of trial of separate indictments.
  - (5). In general.
  - (1). Against same defendant.
  - (2). Against separate defendants.
- 622. Joint or separate trials of codefendants.
- 622.6. — In general.
  - (1). In general.
  - (2). Preferences or presumptions.
  - (3). Discretion in general.
  - (4). Conspiracy.
- 622.7. — Grounds for severance or joinder.
  - (1). In general.
  - (2). Relatedness of offenses.
  - (3). Prejudice; fair trial.
  - (4). Conspiracy cases.
  - (5). Aiders, abettors, or accessories.
  - (6). Antagonistic defenses; hostility.
  - (7). Inculcation of defendant by codefendant; conflicting testimony.
  - (8). Evidence admissible only against codefendant; spillover or compartmentalization.
  - (9). Confessions, admissions, or declarations.
  - (10). Availability of codefendant's testimony at joint trial; comment on refusal to testify.
  - (11). Disparity in weight of evidence.
  - (12). Matters pertaining to counsel.
  - (13). Absence of codefendant; number of codefendants.
- 622.8. — Proceedings.
  - (1). In general.
  - (2). Application or motion.
  - (3). Time for proceedings.
  - (4). Evidence.
  - (5). Hearing.

## 110. CRIMINAL LAW

## XX. TRIAL.(Cont'd)

- (6). Proceedings at trial.
- (7). — In general.
- (8). — Jury issues.
- 622.9. — Waiver.
- 623. Separate trial or hearing on issue of insanity, incapacity, or incompetency.  
*Excludes extrajudicial examination by experts, see MENTAL HEALTH §434. Insanity or incompetency at time of sentencing, see SENTENCING AND PUNISHMENT §250–272.*
- 623.1. — In general.
- 624. — Insanity or incapacity at time of offense.
- 625. — Insanity or incompetency at time of proceedings.
  - (1). In general.
  - (2). Discretion in general.
  - (3). Successive proceedings in general.
- 625.5. — Proceedings on plea of guilty but mentally ill.
- 625.10. — Preliminary proceedings.
  - (1). In general.
  - (2). Evidence, information, or conduct invoking inquiry.
    - (2.1). — In general.
  - (3). — Doubt as to competency; reasonable cause or grounds.
  - (4). Initiation by prosecution or sua sponte by court; absence of request.
- 625.15. — Evidence.
- 625.20. — Conduct of trial or hearing.
- 625.25. — Retrospective or nunc pro tunc hearing.
- 625.30. — Determination; acquittal.
- 625.35. — Waiver or objection by defendant.
- 626. Notice of trial.
- 627. Service of copy of indictment, information, or minutes of evidence.
  - (1). In general.
  - (2). Necessity to serve.
  - (3). Demand for service.
  - (4). Time for service.
  - (5). Sufficiency of copy.
  - (6). Requisites of service.
  - (7). Objections for failure to serve, and waiver thereof.
- 627.1. Lie detector, polygraph, drug or truth serum tests.

## XX. TRIAL.(Cont'd)

- 627.2. Depositions.
- 627.5. Discovery prior to and incident to trial.
  - (1). In general; examination of victim or witness.  
*Examination to determine competency of witness, see WITNESSES.*
  - (2). Discretion in ordering disclosure.
  - (3). Prosecution's right to disclosure.
  - (4). Subpoena duces tecum in general.
  - (5). Circumstances precluding disclosure; information unavailable.
  - (6). Work product.
- 627.6. — Information or things, disclosure of.
  - (1). In general.
  - (2). Documents or tangible objects.
  - (3). Particular documents or tangible objects.
  - (4). Reports, memoranda or notes.
  - (5). F.B.I., police and other investigative reports.
  - (6). Records.
- 627.7. — Statements, disclosure of.
  - (1). In general.
  - (2). Defendant's confession or other statement.
  - (3). Statements of witnesses or prospective witnesses.
  - (4). Materiality or relevance of statement.
  - (5). Accuracy or inclusiveness of reproduction; form.
- 627.8. — Proceedings to obtain disclosure.
  - (1). In general.
  - (2). Time when disclosure is permitted.
  - (3). Application, motion or request; affidavits.
  - (4). Examination by court; inspection in camera.
  - (5). Hearing; excising extraneous matter; review.
  - (6). Failure to produce information.
- 627.9. Grand jury proceedings; disclosure.
  - (1). In general; discretion.
  - (2). Grounds for disclosure or inspection.
  - (2.1). — In general.

**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- (3). — Challenge of sufficiency or legality of evidence.
- (4). — Cross-examination or impeachment of witnesses.
- (5). Proceedings for disclosure.
- 627.10. Informers or agents, disclosure.  
*Excludes privilege against disclosure on examination of witness, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY* §374.
- (1). In general.
- (2). Particular cases.
- (2.1). — In general.
- (3). — Drug and narcotic offenses.
- (4). Informer supplying probable cause.
- (5). Informer not a witness to or participant in offense.
- (6). Production or location.
- (7). Proceedings for disclosure.
- (7.1). — In general.
- (8). — Hearing; in camera examination.
- (9). — Compliance and effect of noncompliance.
- 628. Indorsement of witnesses on indictment or information.
- (1). In general.
- (2). Necessity of indorsing.
- (3). Time for making indorsements.
- (4). Sufficiency of indorsement.
- (5). Correction or amendment of indorsement.
- (6). Effect of failure to indorse in general.
- (7). Competency of witnesses not indorsed.
- (8). Waiver of irregularities or failure to indorse.
- 629. List of witnesses and disclosure of other matters.
- (1). In general.
- (2). Statutes and rules.
- (3). List or disclosure of prosecution witnesses.
- (3.1). — In general.
- (4). — Demand and proceedings thereon.
- (5). — Identification of witnesses; names and addresses.

**XX. TRIAL.**(Cont'd)

- (6). List or disclosure of defense witnesses.
- (7). Exchange of lists.
- (8). Supplemental or amended lists.
- (9). Alibi witnesses or defense.
- (9.5). Defense of insanity or incapacity.
- (10). Eyewitnesses; identification evidence.
- (11). Expert witnesses.
- (12). Hypnotized witnesses.
- 629.5. — Effect of failure to make proper disclosure.
- (1). In general; excuses and sanctions in general.
- (2). Exclusion of evidence or witnesses.
- (3). Matters known to opponent; accomplices or codefendants.
- (4). Surprise and newly-discovered or newly-available evidence.
- (5). Rebuttal or impeachment witnesses.
- (6). Alibi.
- (7). Expert witnesses.
- (8). Objections and proceedings.
- 630. Disclosure of names of private prosecutors.
- 631. Service of list of jurors.
- (1). In general.
- (2). Necessity to serve.
- (3). Demand for service.
- (4). Time of service.
- (5). Sufficiency of list in general.
- (6). Venireman excused or not summoned.
- (7). Misnomer of veniremen.
- (8). Service of special or amended venire.
- (9). Requisites of service and return thereof.
- (10). Effect of failure to serve.
- (11). Objections and waiver thereof.
- 632. Dockets and pretrial procedure.
- (1). In general.
- (2). Dockets and calendars.
- (3). Motions.
- (3.1). — In general.
- (4). — Motions in limine.

**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- (5). Pretrial conference or hearing; order.

**(B) COURSE AND CONDUCT OF TRIAL IN GENERAL.**

*See also CONSTITUTIONAL LAW* ¶4598 *et seq.*, 4800 *et seq.*

- 633.1. In general.
- 633.2. Nature and purpose of trial in general.
- 633.3. Role and obligations of judge.
- 633.4. — In general.
- 633.5. — Discretion.
- 633.6. — Order, decorum, and efficiency of proceedings.
- 633.7. Fair and impartial trial in general.
- 633.8. Right of defendant to fair trial in general.
- 633.9. Right of prosecution to fair trial in general.
- 633.10. Requisites of fair trial.
- 633.11. Management of courtroom in general.
- 633.12. Seating in court.
- 633.13. — In general.
- 633.14. — Counsel table.
- 633.15. — Seating of defendant.
- 633.16. Cameras, recording devices, sketches, and drawings.
- 633.17. Security in general; guards in courtroom.
- 633.18. Conduct of or affecting witnesses.
- 633.19. — In general.
- 633.20. — Appearance and attire of witness.
- 633.21. — Conduct of witness.
- 633.22. — Restraint of witness.
- 633.23. — Protection of witness.
- 633.24. Conduct of or affecting defendant.
- 633.25. — In general.
- 633.26. — Appearance and attire in general.
- 633.27. — Civilian or prison clothing.
- 633.28. — Conduct of defendant.
- 633.29. — Protection of defendant.
- 633.30. Impaired defendants.
- 633.31. Experts and others appointed to assist court.
- 633.32. Publicity, media coverage, and occurrences extraneous to trial.
- 633.33. Gag orders and similar restraints.

**XX. TRIAL.**(Cont'd)

- 633.34. Reading indictment.
- 634. Presence of judge.
- 635. Public trial.
- 635.1. — In general.
- 635.2. — Purpose of public trial.
- 635.3. — Requisites of public trial; definitions.
- 635.4. — Discretion to close proceedings in general.
- 635.5. — Limitations on power to close proceedings.
  - (1). In general.
  - (2). Alternatives to closure.
  - (3). Narrow tailoring requirement.
- 635.6. — Considerations affecting propriety of closure.
  - (1). In general.
  - (2). Fair trial.
  - (3). Overriding interest; necessity.
  - (4). Management of courtroom; security, order, and decorum.
  - (5). Protection of confidential or classified information; privacy in general.
- 635.7. — Nature of proceeding affecting propriety of closure.
  - (1). In general.
  - (2). Proceedings related to competency or sanity.
  - (3). Pretrial proceedings.
  - (4). Jury selection.
  - (5). Proceedings to determine admissibility of evidence.
  - (6). Sentence-related proceedings.
  - (7). Post-trial proceedings.
  - (8). In camera proceedings.
- 635.8. — Subject of proceeding or of evidence affecting closure.
- 635.9. — Interests of persons affecting propriety of closure.
  - (1). In general.
  - (2). Spectators.
  - (3). Witnesses and persons associated with witnesses.
  - (4). Officers and informants.
  - (5). Defendants and persons associated with defendants.
  - (6). Victims and persons associated with victims.

**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- (7). Children and minors.
- (8). Other particular persons or classes of persons.
- 635.10. — Photographing, recording, or broadcasting proceedings.
- 635.11. — Proceedings on request for closure.
  - (1). In general.
  - (2). Necessity, sufficiency, and effect of motion or request.
  - (3). Hearing.
  - (4). Evidentiary matters.
  - (5). Findings.
- 635.12. — Objections to closure and proceedings thereon.
- 635.13. — Waiver of public trial.
  - (1). In general.
  - (2). Sufficiency.
- 636. Presence of accused.
 

*Presence of accused at sentencing, see SENTENCING AND PUNISHMENT* §340.

  - (1). In general.
  - (2). Voluntary or temporary absence.
  - (3). During preliminary proceedings and on hearing of motions.
  - (4). On reception of evidence.
  - (5). On view by jury.
  - (6). During argument of counsel.
  - (7). On giving instructions to or otherwise communicating with jury.
  - (8). On rendition of verdict.
  - (9). Proceedings after verdict.
- 637. Custody and restraint of accused.
  - 637.1. — In general.
  - 637.2. — Right to appear without restraints.
  - 637.3. — Discretion of court.
  - 637.4. — Grounds and circumstances affecting use of restraints in general.
  - 637.5. — Particular cases.
  - 637.6. — Restraint outside courtroom, and during transportation.
  - 637.7. — Visibility of restraint; restraint not observed by jurors.
  - 637.8. — Taking into custody, and detention of accused.
  - 637.9. — Procedure.
    - (1). In general.
    - (2). Hearing.

**XX. TRIAL.**(Cont'd)

- (3). Evidentiary matters.
- (4). Findings, and statement of reasons.
- (5). Instructions.
- 642. Appointment and services of interpreter.
- 643. Appointment and services of stenographer.
- 644. Attendance and conduct of officers.
- 645. Right to open and close.
- 648. Time for sessions.
- 649. Adjournments pending trial.
  - (1). In general.
  - (2). To procure witnesses or evidence.
  - (3). For absence of counsel.
  - (4). For consultation of counsel or preparation of defense.
- 650. Experiments and tests.
- 651. View and inspection.
  - (1). In general.
  - (2). Proceedings at view.
- 652. Identification of accused.
- 653. Presence of others under indictment.
- 654. Remarks and conduct of judge.
- 655. — In general.
  - (1). In general.
  - (2). Comments on defense.
  - (3). Remarks on application for continuance.
  - (4). Remarks in selecting jury.
  - (5). Remarks and conduct as to argument and conduct of counsel.
  - (6). Remarks and conduct on giving or refusing instructions.
  - (7). Comments on verdicts in other cases.
  - (8). Remarks as to separation or discharge of jury.
  - (9). Communication with jurors or witnesses.
  - (10). Proceedings for attempted bribery.
- 656. — Comments on evidence or witnesses.
  - (1). In general.
  - (2). Examination and cross-examination of witnesses.
  - (3). Remarks on ruling on admissibility of evidence.

**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- (4). Statement as to what evidence is before jury.
- (5). Expressions affecting credibility of witnesses.
- (6). Expression as to credibility of accused.
- (7). Comment on failure of accused to testify.
- (8). Expression of opinion as to facts in issue.
- (9). Expressions as to weight and sufficiency of evidence and guilt of accused.
- 657. — Proceedings for contempt.
- 658. — Proceedings against witness for perjury or other offense.
- 659. Presence and conduct of bystanders.
- 660. Objections and exceptions.

**(C) RECEPTION OF EVIDENCE.**

*See also CONSTITUTIONAL LAW* ¶4650 *et seq.*

- 661. Necessity and scope of proof.
- 662. Right of accused to confront witnesses.  
*Former* ¶662(1–8) *are now obsolete. Subject matter of those Key Numbers is now classified at* ¶662.1–662.80. *Effect of doctrine on admissibility of dying declarations, see also HOMICIDE* ¶1075–1097.
- 662.1. — In general.
- 662.3. — Nature or stage of proceeding.
- 662.4. — Failure to produce or disclose witnesses or evidence.
- 662.5. — Informants, failure to produce or disclose.
- 662.6. — Refusal of codefendants or others to testify.
- 662.7. — Cross-examination and impeachment.
- 662.8. — Out-of-court statements and hearsay in general.
- 662.9. — Availability of declarant.
- 662.10. — Confessions or declarations of codefendants.
- 662.11. — Coconspirators' statements.
- 662.30. — Use of depositions or other discovery.
- 662.40. — Use of documentary evidence.
- 662.50. — Statement as to what absent witness will testify to.
- 662.60. — Testimony at preliminary examination, former trial, or other proceeding.

**XX. TRIAL.**(Cont'd)

- 662.65. — Conduct of trial.
- 662.70. — Proceedings in absence of accused.
- 662.80. — Waiver of right.
- 663. Introduction of documentary and demonstrative evidence.
- 664. Reading depositions.
- 665. Separation and exclusion of witnesses.
  - (.5). In general.
  - (1). Power and duty of court.
  - (2). Exceptions from rule.
  - (3). What constitutes violation of rule.
  - (4). Enforcement of rule.
  - (5). Violation of rule by witness without fault of party.
  - (6). Witnesses ignorant of rule.
  - (7). Witnesses present in courtroom, not having been put under the rule.
- 666. Compelling calling of witness.
  - (1). In general.
  - (2). Witnesses indorsed on indictment.
  - (3). Witnesses summoned or present.
  - (4). Eyewitnesses to offense.
  - (5). Witnesses possessing peculiar knowledge.
- 666.5. Consultation between accused or counsel and witnesses.
- 667. Taking oral testimony in general.
  - (1). In general.
  - (2). Reducing testimony to writing.
- 668. Statement by accused.
- 670. Offer of proof.
- 671. Presence of jury during inquiry as to admissibility.
- 672. Provisional or conditional admission.
- 673. Effect of admission.
  - (1). In general.
  - (2). Restriction to special purpose in general.
  - (3). Limiting effect of impeaching evidence.
  - (4). Limiting effect of evidence competent only as against one of several defendants.
  - (5). Limiting effect of evidence of other offenses.
- 674. Exclusion of improper evidence.
- 675. Cumulative evidence in general.

**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- 676. Number of witnesses.
- 677. Withdrawal of evidence.
- 678. Election between acts.
  - (.5). In general.
  - (1). Right to compel election.
  - (2). Time for election.
  - (3). What constitutes election.
  - (4). Effect.
  - (5). Failure to demand election.
- 680. Order of proof in general.
  - (1). In general.
  - (2). Proof of corpus delicti.
- 681. Admission of evidence dependent on preliminary proof.
  - (1). In general.
  - (2). Provisional or conditional admission.
  - (3). Effect of failure to subsequently supply proof.
- 682. Scope of evidence in chief.
- 683. Scope of evidence in rebuttal.
  - (1). In general.
  - (2). Discretion of court.
  - (3). On issue of insanity or intoxication.
  - (4). Alibi.
- 684. Admission in rebuttal of evidence proper in chief.
- 685. Reopening case for further evidence.
- 686. — In general.
  - (1). In general.
  - (2). After party offering evidence has rested.
- 687. — After close of evidence.
  - (1). In general.
  - (2). During or after close of argument.
- 688. — After demurrer to evidence or motion to dismiss or direct verdict.
- 689. — After submission of case to jury.

**(D) PROCEDURES FOR EXCLUDING EVIDENCE.**

- 690. Right to object.
- 691. — In general.
- 692. — Estoppel or waiver.
- 693. Time for objection.
- 694. Mode of making objection.
- 695. Sufficiency and scope of objection.
  - (1). In general.

**XX. TRIAL.**(Cont'd)

- (2). General or specific.
- (3). On joint trial.
- (4). Statement of grounds.
- (5). Scope and questions raised.
- (6). Evidence admissible in part.
- 695.5. Hearing, ruling, and objections.
- 696. Motion to strike out.
  - (1). In general.
  - (2). Necessity of motion.
  - (3). Grounds for motion.
  - (4). Form, requisites, and sufficiency.
  - (5). Necessity of previous objection.
  - (6). Time for motion.
  - (7). Evidence admissible in part.
  - (8). Evidence elicited by party moving to strike out.
  - (9). Ruling or order.
- 697. Exceptions.
- 698. Effect of failure to object or except.
  - (1). In general.
  - (2). Exclusion of evidence by court on its own motion.
  - (3). Repetition of incompetent evidence.

**(E) ARGUMENTS AND CONDUCT OF COUNSEL (OBSOLETE, SEE XXXI).****(F) PROVINCE OF COURT AND JURY IN GENERAL.**

- 731. Functions as judges of law and facts in general.
- 732. Constitutional and statutory provisions.
- 733. Questions of law or of fact.
- 734. — In general.
- 735. — Mixed questions of law and fact.
- 736. — Preliminary or introductory questions of fact.
- 737. — Issues of fact in general.
  - (1). In general.
  - (2). Place of offense.
- 738. — Elements of offenses.
- 739. — Defenses in general.
  - (1). In general.
  - (2). Alibi.
  - (3). Limitations.
  - (4). Former jeopardy.
  - (5). Intoxication.
- 739.1. — Entrapment.
  - (1). In general.

**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- (2). Narcotics cases.
- (3). Other particular offenses.
- 740. — Defense of insanity.
- 741. — Weight and sufficiency of evidence in general.
  - (1). In general.
  - (2). Identity and presence of accused.
  - (3). Confessions, admissions, and declarations.
  - (4). Opinion evidence.
  - (5). Corroboration of accomplices.
  - (6). Circumstantial evidence.
  - (7). Failure of proof.
- 742. — Credibility of witnesses.
  - (1). In general.
  - (2). Accomplices.
  - (3). Effect of impeachment.
- 743. — Credibility of accused.
- 744. — Uncontroverted evidence.
- 745. — Inferences from evidence.
- 747. — Conflicting evidence.
- 748. — Grade or degree of offense.
- 749. — Extent of punishment.
- 750. Withdrawal of particular counts or issues.
- 751. Withdrawal of juror.
- 752. Demurrer to evidence.
- 752.5. Dismissal or nonsuit.
- 753. Direction of verdict.
- 753.1. — In general.
- 753.2. — Of acquittal.
  - (1). In general.
  - (2). Grounds in general.
  - (3). Insufficiency of evidence.
    - (3.1). — In general.
  - (4). — Substantial evidence.
  - (5). — Sufficiency to warrant conviction or to present jury question.
  - (6). — Suspicion or conjecture; reasonable doubt.
  - (7). Necessity, requisites and time of motion.
  - (8). Hearing and determination.
- 753.3. — Of conviction.
- 754. Instructions invading province of jury.
- 754.1. — In general.
- 755. — Authority to instruct in general.

**XX. TRIAL.**(Cont'd)

- 755.5. — Comments on facts or evidence in general.
- 756. — Statement and review of evidence.
- 757. — Credibility of witnesses.
  - (1). In general.
  - (2). Manner of determining credibility.
  - (3). Detectives and informers.
  - (4). Accomplices and codefendants.
  - (5). Interest or bias.
  - (6). Effect of impeachment or failure to impeach.
  - (7). Effect of willful falsehood.
- 758. — Credibility of accused.
- 759. — Inferences from evidence.
  - (1). In general.
  - (2). Intent and malice.
  - (3). Motive or absence of motive.
  - (4). Possession of stolen goods.
  - (5). Flight.
- 760. — Hypothetical statements.
- 761. — Assumptions as to facts.
  - (1). In general.
  - (2). Instructions assuming facts in general.
  - (3). Issues and theories of case.
  - (4). Intent and malice.
  - (5). Time and place of offense.
  - (6). Facts connected with crime charged in general.
  - (7). Manner of commission of offense.
  - (8). Character of articles used in committing offense.
  - (9). Admitted or uncontroverted facts.
  - (10). Facts established by testimony.
  - (11). Commission of offense.
  - (12). Commission by accused of act charged.
  - (13). Guilt of defendant.
  - (14). Commission of other or related offenses.
  - (15). Existence of incriminating evidence.
  - (16). Confessions, admissions, and declarations.
  - (17). Credibility and impeachment of witnesses.
  - (18). Truth, weight, or incriminating character of evidence.



**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

762. — Opinion or belief as to facts.
- (1). In general.
  - (2). Right to express opinion.
  - (3). Weight and effect of evidence.
  - (4). Uncontroverted facts.
  - (5). Guilt of defendant.
763. — Weight and sufficiency of evidence.
- (1). In general.
  - (2). Determination that there is some evidence.
  - (3). Determination that there is no evidence.
  - (5). Reference to evidence as “tending to prove.”.
  - (6). Weight of particular parts of testimony.
  - (7). Directing verdict or declaring law if jury believe the evidence.
  - (8). Directing verdict or declaring law if certain facts are found.
  - (9). Degree of crime.
  - (10). Intent or malice.
  - (11). Conflicting evidence.
  - (12). Character of evidence.
  - (13). Circumstantial evidence.
  - (14). Confining jury to consideration of part of evidence.
  - (15). Affirmative and negative testimony.
  - (16). Opinion evidence.
  - (17). Purpose of evidence.
  - (18). Corroboration of witness.
  - (19). Confessions.
  - (20). Admissions and declarations.
  - (21). Dying declarations.
  - (22). Defense of insanity.
  - (23). Self-defense.
  - (24). Reasonable doubt.
765. — Comments on conduct or character of accused or prosecutor.
766. — Determination of questions of law.
767. — Application of law to facts.
768. — Instructions as to duties of jury.
- (1). In general.
  - (2). Duties of individual jurors.
  - (3). Urging agreement.
  - (4). Fixing punishment.

**(G) INSTRUCTIONS: NECESSITY, REQUISITES, AND SUFFICIENCY.**

*See also CONSTITUTIONAL LAW* ¶4635.

769. Duty of judge in general.
770. Issues and theories of case in general.
- (1). In general.
  - (2). Necessity of instructions.
  - (3). Requisites and sufficiency.
771. Corpus delicti.
772. Elements and incidents of offense, and defenses in general.
- (1). In general.
  - (2). Defining or describing offense.
  - (3). Reference to indictment.
  - (4). Time and place of offense.
  - (5). Intent, motive, and malice.
  - (6). Defenses in general.
773. Insanity.
- (1). In general.
  - (2). Sufficiency in general.
  - (3). Disparagement of defense.
  - (4). Test of accountability.
774. Intoxication.
775. Alibi.
- (1). In general.
  - (2). Necessity of special instructions.
  - (3). Requisites and sufficiency in general.
  - (4). Sufficiency as to time necessarily covered.
  - (5). Effect of failure to prove.
  - (6). Disparagement of defense.
776. Character.
- (.5). In general.
  - (1). Necessity of instructions.
  - (2). Sufficiency in general.
  - (3). Evidence justifying or requiring instructions.
  - (4). Effect of good character in general.
  - (5). Effect to generate reasonable doubt.
  - (6). Confining effect to doubtful cases.
  - (7). Effect of bad character.
  - (8). Reference to inability or failure of state to rebut.
777. Rules of evidence in general.
- 777.5. Statement and review of evidence.
778. Presumptions and burden of proof.
- (.5). In general.

## 110. CRIMINAL LAW

## XX. TRIAL.(Cont'd)

- (1). Necessity of instructions in general.
- (2). Sufficiency in general.
- (3). Necessity of instructions as to presumption of innocence.
- (4). Sufficiency of instructions as to presumption of innocence.
- (5). Shifting burden of proof.
- (6). Intent and motive.
- (7). Insanity.
- (8). Alibi.
- (9). Character.
- (10). Suppression or fabrication of evidence.
- (11). Flight or surrender.
- (12). Self-defense.
- 779. Acts and declarations of conspirators and codefendants.
- 780. Testimony of accomplices and codefendants.
  - (.5). In general.
  - (1). Necessity of instructions.
  - (2). Evidence justifying or requiring instructions.
  - (3). Sufficiency in general.
  - (4). Extent of corroboration required.
  - (5). Corroboration by another accomplice.
- 781. Admissions and confessions.
  - (.5). In general.
  - (1). Necessity of instructions.
  - (2). Evidence justifying or requiring instructions.
  - (3). Existence of corroborative evidence.
  - (4). Sufficiency in general.
  - (5). Excluding from consideration if found involuntary.
  - (6). Weight and credit.
  - (7). Silence under accusation.
  - (8). Statements favorable to defendant.
- 782. Determination of sufficiency of evidence in general.
  - (1). In general.
  - (2). Reference to policy of law and conviction of innocent men.
  - (3). That jury are exclusive judges of facts.

## XX. TRIAL.(Cont'd)

- (4). Manner of determining sufficiency.
- (5). Character of evidence in general.
- (5.5). Identification evidence.
- (6). Positive and negative testimony.
- (7). Inferences from evidence.
- (8). Conflicting evidence.
- (9). Degree of proof in general.
- (10). Preponderance of evidence and number of witnesses.
- (11). Proof to satisfaction of jury.
- (12). Absolute proof.
- (13). Matters of defense in general.
- (14). Insanity or intoxication.
- (15). Alibi.
- (16). Self-defense.
- 783. Purpose and effect of evidence.
 

*Includes sufficiency of instruction. Necessity for instruction and duty to instruct, see ⚖673.*

  - (1). In general.
  - (2). Limiting effect of impeaching evidence.
  - (3). Directing verdict or declaring law if jury believe the evidence or find certain facts.
- 783.5. Excluding evidence from consideration.
- 784. Circumstantial evidence.
  - (.5). In general.
  - (1). Necessity of instructions in general.
  - (2). Direct and circumstantial evidence.
 

*Necessity of instruction on circumstantial evidence when there is direct evidence, see ⚖814.*
  - (3). Circumstances supported by admissions or confessions.
  - (4). Form and sufficiency in general.
  - (5). Degree of proof of circumstances.
  - (6). Circumstances to be consistent with each other.
  - (7). Circumstances to be consistent with hypothesis of guilt and inconsistent with that of innocence.
  - (8). Weight and effect.
  - (9). Sufficiency to generate doubt.
- 785. Credibility of witnesses.
  - (.5). In general.
  - (1). Necessity of instructions.

**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- (2). Evidence justifying or requiring instructions.
- (3). Sufficiency in general.
- (4). Police officers, detectives, and informers.
- (5). Relatives of accused.
- (6). Children.
- (7). Expert witnesses.
- (8). Character or conduct of witnesses.
- (9). Interest or bias.
- (10). Manner of determining credibility in general.
- (11). Necessity of instructions as to effect of impeachment.
- (12). Sufficiency of instructions as to effect of impeachment.
- (13). Effect of impeachment to generate reasonable doubt.
- (14). Corroboration of impeached witness.
- (15). Necessity of instructions as to effect of willful falsehood.
- (16). Sufficiency of instructions as to effect of willful falsehood.
- 786. Credibility of testimony or statement of accused.
  - (.5). In general.
  - (1). Necessity of instructions.
  - (2). Sufficiency in general.
  - (3). Reference to interest in event.
  - (4). Corroboration.
  - (5). Reference to fact that statement is not under oath.
  - (6). Effect of impeachment or contradiction.
  - (7). Effect of false testimony.
- 787. Failure of accused to testify, to testify fully, or to make statement.
  - (.5). In general.
  - (1). Necessity and propriety of instructions.
  - (2). Requisites and sufficiency of instructions.
- 788. Failure to call witness or produce evidence.
- 789. Reasonable doubt.
  - (.5). In general.
  - (1). Necessity of defining reasonable doubt.

**XX. TRIAL.**(Cont'd)

- (2). Sufficiency of definitions of reasonable doubt in general.
- (3). Necessity of instructions requiring proof beyond reasonable doubt.
- (4). Sufficiency of instructions as to proof beyond reasonable doubt.
- (5). Instructions not requiring doubt to be reasonable.
- (6). Giving benefit of doubt to state.
- (7). Strong, real, substantial, or well-founded doubt.
- (8). Moral certainty.
- (9). Abiding conviction, or full satisfaction to moral certainty.
- (10). Conscientious belief.
- (11). Belief or doubt as men.
- (12). Doubt which would influence action in private affairs.
- (13). Doubt for which reason can be given.
- (14). Suspicion or probability of guilt.
- (15). Probability or supposition of innocence.
- (16). Possibility of innocence.
- (17). Doubt arising from evidence or want of evidence.
- (18). Doubt upon any fact.
- 790. Matters of law in general.
- 791. Law applicable to particular issues or theories.
- 792. Principals and accessories.
  - (.5). In general.
  - (1). Necessity of instructions.
  - (2). Evidence justifying or requiring instructions.
  - (3). Form, requisites, and sufficiency of instructions.
- 793. Codefendants.
- 795. Grade or degree of offense; included offenses.
  - (1). In general.
  - (1.5). Relation between offenses; sufficiency of charging instrument.
  - (1.10). Opportunity for jury pardon, mercy, or compromise.
  - (2). Evidence justifying or requiring instructions.
  - (2.1). — In general.

## 110. CRIMINAL LAW

## XX. TRIAL.(Cont'd)

- (2.5). — Reasonable or rational basis.
- (2.10). — Some, any, slight, or weak evidence.
- (2.15). — Evidence only of offense charged.
- (2.20). — Evidence only of lesser offense.
- (2.25). Particular cases and offenses charged.

*Assault or battery as included offense, see ASSAULT AND BATTERY* ¶588.

*The intention here is to classify cases according to the greater offense or the offense alleged in the accusatory instrument.*

- (2.26). — In general.
- (2.30). — Assault and battery charges.

*Degree of assault or battery, see ASSAULT AND BATTERY* ¶553 et seq.

- (2.35). — Burglary charges.
- (2.40). — Larceny, embezzlement, or receiving stolen goods charges.

*Excludes degree of larceny, see LARCENY* ¶79.

- (2.45). — Fraud, false pretenses, or forgery charges.
- (2.50). — Homicide charges.

*Excludes degree of homicide and assault with intent to kill as included offenses, see HOMICIDE* ¶1450–1462.

- (2.55). — Motor vehicle offense charges.
- (2.60). — Kidnapping charges.
- (2.70). — Drug or narcotics charges.

- (2.75). — Robbery charges.

*Excludes degrees of robbery, see ROBBERY* ¶27(5), and assault with intent to rob, see ROBBERY ¶27(7).

- (2.80). — Sex offense charges; offenses involving infants.

- (2.85). Attempt as included offense.

*Excludes attempted robbery, see ROBBERY* ¶27(7).

- (2.90). Effect of defendant's objection or defense inconsistent with lesser charge.

- (3). Sufficiency in general.

- (4). Effect of doubt as to grade or degree.

796. Punishment.

797. Power of recommendation to mercy.

798. Manner of arriving at verdict.

- (.5). In general; unanimity.
- (.6). Several counts or offenses.

## XX. TRIAL.(Cont'd)

- (.7). Unanimity as to facts, conduct, methods, or theories.

- (1). Doubt of individual juror.
- (2). Determination by lot.

798.5. Form of verdict.

799. Influence of arguments of counsel.

800. Definition or explanation of terms.

- (1). In general.
- (2). Terms in common use.
- (3). Technical words.
- (4). Offenses.
- (5). Evidence and matters relating thereto.
- (6). Intent, malice, deliberation, and premeditation.
- (7). Matters of defense.

801. Time for giving instructions.

804. Written instructions.

- (5). In general.
- (1). Necessity of writing.
- (2). Waiver.
- (3). Nature of instructions in general.
- (4). Form of verdict.
- (5). Requisites and sufficiency in general.
- (6). Modification and explanation.
- (7). Reducing oral instructions to writing.
- (8). Signing, sealing, and filing.
- (9). Manner of giving instructions.

805. Form and language in general.

- (1). In general.
- (2). Reference to other instructions.
- (3). Use of particular words or terms.

806. Repetition.

- (1). In general.
- (2). Matters of defense.
- (3). Reasonable doubt and degree of proof.

807. Argumentative instructions.

- (1). In general.
- (2). Duties of jury.

808. Reading or quoting authorities or reported cases.

808.5. Reading or quoting statutes.

809. Confused or misleading instructions.

810. Inconsistent or contradictory instructions.

**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- 811. Undue prominence of particular matters.
  - (1). In general.
  - (2). Weight and effect of evidence of particular facts in general.
  - (3). Elements and incidents of offense.
  - (4). Particular defensive circumstances.
  - (5). Credibility of witnesses.
  - (6). Credibility of accused.
  - (7). Degree of offense.
- 812. Appeals to sympathy or prejudice.
- 813. Abstract instructions in general.
- 814. Application of instructions to case.
  - (1). In general.
  - (2). Evidence justifying instructions in general.
  - (3). Matters not sustained by evidence in general.
  - (4). Matters not in dispute.
  - (5). Elements and incidents of offense in general.
  - (6). Intent and motive.
  - (7). Time and place of offense.
  - (8). Matters of defense in general.
  - (10). Insanity or intoxication.
  - (11). Alibi.
  - (12). Character.
  - (13). Presumptions and burden of proof.
  - (14). Acts and declarations of conspirators and codefendants.
  - (15). Testimony of accomplices.
  - (16). Admissions and confessions.
  - (17). Circumstantial evidence.
  - (18). Credibility of witnesses.
  - (19). Principals and accessories.
  - (20). Grade or degree of offense.
  - (21). Duty of applying instructions to evidence.
- 815. Instructions excluding or ignoring issues, defenses, or evidence.
  - (1). In general.
  - (2). Assumption as to facts.
  - (3). Issues.
  - (4). Elements and incidents of offense.
  - (5). Defenses.
  - (6). Character.
  - (7). Testimony of accomplices.

**XX. TRIAL.**(Cont'd)

- (8). Admissions and confessions.
- (9). Sufficiency of evidence and reasonable doubt.
- (10). Credibility of witnesses.
- (11). Testimony or statement of accused.
- (12). Principals, accessories, and accomplices.
- (13). Grade or degree of offense and punishment.
- 817. Instructions as to application of personal knowledge of jurors.
- 818. Instructions correcting previous erroneous instructions and omissions.
- 819. Withdrawal of instructions or remarks.
- 820. Construction of instructions given.
- 821. Inadvertent errors and omissions.
  - (1). In general.
  - (2). Omissions.
- 822. Construction and effect of charge as a whole.
  - (1). In general.
  - (2). Use of particular words or terms.
  - (3). Direction of verdict.
  - (4). Invasion of province of jury.
  - (5). Capacity to commit crime.
  - (6). Elements and incidents of offense.
  - (7). Intent, malice, and motive.
  - (8). Matters of defense.
  - (9). Insanity and intoxication.
  - (10). Character.
  - (11). Presumptions and burden of proof.
  - (12). Testimony of accomplices.
  - (13). Weight and sufficiency of evidence.
  - (14). Credibility of witnesses.
  - (15). Testimony or statement of accused.
  - (16). Reasonable doubt.
  - (17). Grade or degree of offense.
  - (18). Excluding or ignoring evidence.
- 823. Error in instructions cured by withdrawal or giving other instructions.
  - (1). In general.
  - (2). Curing invasion of province of jury.
  - (3). Capacity to commit crime.

**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- (4). Elements and incidents of offense in general.
- (5). Intent, malice, and motive.
- (6). Matters of defense.
- (7). Insanity and intoxication.
- (8). Character.
- (9). Presumptions and burden of proof.
- (10). Weight and sufficiency of evidence.
- (11). Admissions and confessions.
- (12). Credibility of witnesses.
- (13). Credibility of accused.
- (14). Circumstantial evidence.
- (15). Reasonable doubt.
- (16). Principals and accessories.
- (17). Grade or degree of offense.
- (18). Excluding or ignoring evidence.

**(H) INSTRUCTIONS: REQUESTS.**

*See also CONSTITUTIONAL LAW* ¶4635.

- 824. Necessity in general.
  - (1). In general.
  - (2). Definition or explanation of terms.
  - (3). Grade or degree of offense.
  - (4). Special issues and defenses.
  - (5). Evidence in general.
  - (6). Presumptions and burden of proof.
  - (7). Testimony of accomplices.
  - (8). Purpose and effect of evidence.
  - (9). Circumstantial evidence.
  - (10). Credibility of witnesses.
  - (11). Testimony or statements of accused.
  - (12). Reasonable doubt.
  - (13). Failure of accused to testify.
  - (14). Province of jury.
  - (15). Verdict.
- 825. Further or more specific instructions.
  - (1). In general.
  - (2). Elements and incidents of offense.
  - (3). Defenses.
  - (4). Matters of evidence.
- 826. Time for asking instructions.
- 827. Form and requisites of requests.
- 828. Written requests.

**XX. TRIAL.**(Cont'd)

- 829. Instructions already given.
  - (1). In general.
  - (2). Issues and theories of case.
  - (3). Elements and incidents of offense.
  - (4). Matters of defense.
  - (5). Self-defense.
  - (6). Insanity and intoxication.
  - (7). Alibi.
  - (8). Character.
  - (9). Presumptions and burden of proof.
  - (10). Testimony of accomplices.
  - (11). Admissions and confessions.
  - (12). Sufficiency of evidence in general.
  - (13). Purpose and effect of evidence.
  - (14). Excluding evidence from consideration.
  - (15). Circumstantial evidence.
  - (16). Credibility of witnesses.
  - (17). Testimony or statement of accused.
  - (18). Reasonable doubt.
  - (19). Doubt of individual juror.
  - (20). Principals and accessories.
  - (21). Grade or degree of offense.
  - (22). Punishment and powers of recommendation to mercy.
- 830. Erroneous requests.
- 832. Withdrawal of requests.
- 833. Manner of giving instructions asked.
- 834. Modification by court.
  - (1). In general.
  - (2). Necessity of giving in language of requests.
  - (3). Elements and incidents of offenses and defenses.
  - (4). Matters of evidence.
  - (5). Reasonable doubt.
- 835. Refusal of requests.
- 836. Noting disposition of requests.

**(I) INSTRUCTIONS: OBJECTIONS AND EXCEPTIONS.**

*See also CONSTITUTIONAL LAW* ¶4635.

- 838. Right to object or except.
- 839. — In general.
- 840. — Estoppel or waiver.
- 841. Time for objection or exception.

**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- 842. Mode of making objection.
- 843. Taking and noting exception.
- 844. Sufficiency and scope of objections or exceptions to instructions given.
  - (1). In general.
  - (2). Questions presented.
- 845. Sufficiency and scope of objections or exceptions to failure or refusal to instruct.
- 846. Operation and effect of objections or exceptions.
- 847. Effect of failure to object or except.

**(J) ISSUES RELATING TO JURY TRIAL.**

- 848. Attendance and custody in general.
- 849. Officer in charge.
- 850. — In general.
- 851. — Oath.
- 852. Admonition to jury or officer.
- 853. Presence during proceedings.
- 854. Separation.
  - (.5). In general.
  - (1). Necessity of keeping jury together generally.
  - (2). Authority or discretion of court to permit separation.
  - (3). Separation by consent of parties.
  - (4). Admonition as condition of permitting separation.
  - (5). Placing juror desiring to absent himself in charge of special officer.
  - (6). Separation before completion of jury.
  - (7). Separation pending proceedings.
  - (8). Separation after agreeing on verdict.
  - (9). What constitutes a separation.
- 855. Misconduct of or affecting jurors.
  - (1). In general.
  - (2). Use of intoxicating liquors.
  - (3). Misconduct of officers in general.
  - (4). Misconduct of third persons in general.
  - (5). Reception of newspapers or mail matter.
  - (6). Presence of judge or officers in jury room.

**XX. TRIAL.**(Cont'd)

- (7). Communication between jurors and officers.
- (8). Communication between jurors and third persons.
- (9). Unauthorized view or inspection.
- 857. Deliberations in general.
  - (1). In general.
  - (2). Assertions or arguments of jurors.
  - (3). Consideration of failure to testify or produce witnesses or evidence.
- 858. Taking papers or articles to jury room.
  - (1). In general.
  - (2). Books and compilations of statutes.
  - (3). Documents or demonstrative evidence.
  - (4). Copies of instructions.
- 859. Reading minutes of or restating testimony.
- 860. Consideration of view or inspection.
- 861. Experiments by jurors.
- 862. Application of personal knowledge of jurors.
- 863. Instructions after submission of cause.
  - See also* ⚭865(1.5).
  - (.5). In general.
  - (1). Authority or discretion of court.
  - (2). Requisites and sufficiency.
- 864. Communications between judge and jury.
- 865. Urging or coercing agreement.
  - (1). In general.
  - See also* ⚭865(1.5).
  - (1.5). “Allen,” “dynamite,” or “hammer,” etc., charge.
  - (2). Time of keeping jury together.
- 866. Manner of arriving at verdict.
- 867. Discharge of jury without verdict; mistrial.
  - Bench trials, see XIII; remarks and conduct of judge, see* ⚭655, 656; *conduct and argument of counsel, see* ⚭1980 *et seq.*; *misconduct of or affecting jurors, see* XX(J); *errors and irregularities relating to qualifications of jurors, jury selection, or discharge of particular jurors, see* JURY; *sentencing proceedings, see* SENTENCING AND PUNISHMENT ⚭335, 1779(1).
- 867.1. — In general.
- 867.2. — Discretion of court.
- 867.3. — Grounds in general.
- 867.4. — Necessity in general.

**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- 867.5. — Otherwise irreparable error or prejudice in general.
- 867.6. — Fairness and justice in general.
- 867.7. — Grand jury and indictment or other accusatory instrument.
- 867.8. — Defendant's mental or physical condition.
- 867.9. — Issues relating to multiple charges or defendants.
- 867.10. — Conduct of trial.
- 867.11. — Counsel.
  - (1). In general.
  - (2). Conflict of interest and change of counsel.
  - (3). Effectiveness of counsel or of pro se representation.
- 867.12. — Evidentiary matters.
  - (1). In general.
  - (2). Demonstrative evidence.
  - (3). Hearsay and documentary evidence.
  - (4). Statements or silence of defendant or co-defendant.
  - (5). Opinions.
  - (6). Other misconduct; character of accused.
  - (7). — In general.
  - (8). — Investigation, arrest, and identification.
  - (9). — Incarceration.
  - (10). — Probation and parole.
  - (11). — Weapons.
  - (12). — Threats, and fear of witnesses or others.
  - (13). — Ambiguity; evidence subject to interpretation.
  - (14). Weight and sufficiency of evidence.
- 867.13. — Confrontation of witnesses.
- 867.14. — Witnesses.
  - (1). In general.
  - (2). Examination.
  - (3). Cross-examination, impeachment, and bolstering.
  - (4). Unresponsive, unsolicited, and unexpected testimony.
  - (5). Conduct of or affecting witness.
  - (6). Absence of witness.

**XX. TRIAL.**(Cont'd)

- 867.15. — Instructions and failure to instruct.
- 867.16. — Failure of jury to reach verdict.
- 867.17. — Time of deliberations.
- 867.18. — Verdict.
- 867.19. — Proceedings on request for mistrial.
- 867.20. — Necessity, sufficiency, and effect of motion; sua sponte declaration.
- 867.21. — Time of motion.
- 867.22. — Waiver, estoppel, and invited error.
  - (1). In general.
  - (2). Acts done or omitted by defense.
  - (3). Defendant's own conduct.
- 867.23. — Necessity and sufficiency of consent.
- 867.24. — Decision or order; findings.
- 867.25. — Effect of determination.
- 868. Objections and disposition thereof.

**(K) VERDICT.**

- 870. Special verdict or findings.
- 871. Preparation and formulation.
  - (1). In general.
  - (2). Signing.
- 872. Rendition and reception.
- 872.5. Assent of required number of jurors.
- 873. Sealed verdict.
- 874. Polling jurors.
- 875. Form and language in general.
  - (1). In general.
  - (2). Omission of words or symbols.
  - (3). Misuse of words.
  - (4). Mistakes in spelling.
- 876. Designation of parties.
- 876.5. Trial of indictments together.
- 877. Codefendants.
- 878. Several counts.
  - (1). In general.
  - (2). Construction, operation, and sufficiency of general verdict.
  - (3). Acquittal or conviction under one of several counts.
  - (4). Inconsistent findings.
  - (5). Dismissal, withdrawal, or abandonment of counts.
- 879. Several pleas.



**110. CRIMINAL LAW****XX. TRIAL.**(Cont'd)

- 880. Sufficiency.
- 880.1. — In general.
- 881. — General verdict.
  - (1). In general.
  - (2). Responsiveness to issues.
  - (3). Certainty.
  - (4). Several offenses or degrees of same offense.
- 882. — Special verdict or findings.
- 883. Specification of offense or grade or degree thereof.
- 884. Assessment of punishment.
- 885. Recommendation to mercy.
- 886. Surplusage.
- 887. Disregard of instructions.
- 888. Amendment or correction.
- 888.1. — In general.
- 889. — By jury.
- 890. — By court.
- 891. Venire de novo.
- 892. Entry and record.
- 893. Construction and operation.
- 894. Objections and exceptions.

**(L) WAIVER AND CORRECTION OF IRREGULARITIES AND ERRORS.**

- 895. Defects and objections which may be waived or cured in general.
- 897. Irregularities in preliminary proceedings.
  - (1). In general.
  - (2). Service of copy of indictment or list of jurors or witnesses.
- 898. Irregularities in conduct of trial.
- 899. Rulings as to admissibility of evidence.
- 900. Misconduct of counsel.
- 901. Rulings as to weight and sufficiency of evidence.
- 902. Instructions to jury.
- 903. Misconduct of or affecting jury.
- 904. Verdict.

**XXI. MOTIONS FOR NEW TRIAL.**

*See also CONSTITUTIONAL LAW* ¶4646.

- 905. Nature and scope of remedy of new trial in general.
- 906. Constitutional and statutory provisions as to new trial.
- 907. Right of prosecution to new trial.

**XXI. MOTIONS FOR NEW TRIAL.**(Cont'd)

- 908. Right of accused to new trial.
- 909. — In general.
- 910. — Codefendants.
- 911. Discretion of court as to new trial.
- 912. Successive applications for new trial.
- 912.5. Necessity of objections or exceptions at trial in general.
- 913. Grounds for new trial in general.
  - (1). In general.
  - (2). Disqualification or prejudice of judge or officers at trial.
  - (3). Absence of witness.
  - (4). Imposition of improper sentence.
  - (5). Want of capacity to commit crime.
  - (6). Former conviction for same offense.
- 914. Errors and irregularities in preliminary proceedings.
- 915. Defects in indictment or information as ground for new trial.
- 916. Want of preparation.
- 917. Refusal of continuance.
  - (1). In general.
  - (2). Absence of witness.
- 918. Errors and irregularities in conduct of trial.
  - (1). In general.
  - (2). Irregularities affecting witnesses.
  - (3). Summoning, impaneling, and oath of jury.
  - (4). Proof of corpus delicti.
  - (5). Remarks by judge.
  - (6). Failure to appoint counsel for accused.
  - (7). Trial without plea.
  - (8). Temporary absence of judge.
  - (9). Absence of defendant or counsel.
  - (10). Objections and exceptions at trial.
- 919. Misconduct of counsel for prosecution.
  - (1). In general.
  - (2). In examination of witnesses.
  - (3). In argument in general.
  - (4). Comments on defendant's failure to testify.
  - (5). Objections and exceptions.
- 920. Incompetency or neglect of counsel for defense.

**110. CRIMINAL LAW****XXI. MOTIONS FOR NEW TRIAL.(Cont'd)**

- 921. Rulings on evidence.
- 922. Instructions and failure or refusal to instruct.
  - (1). In general.
  - (2). Failure to give proper instructions.
  - (3). Giving erroneous instructions.
  - (4). Construction or effect of instruction.
  - (5). Harmless error.
  - (6). Instructions after submission of case.
  - (7). Objections and exceptions at trial.
- 923. Competency of jurors and challenges.
  - (1). In general.
  - (2). Previous opinion, prejudice, or declaration.
  - (3). Alienage.
  - (4). Relationship.
  - (5). Age of juror.
  - (6). Physical disability.
  - (7). Member of previous jury.
  - (8). Member of grand jury.
  - (9). Necessity of objections at trial.
- 924. Misconduct of or affecting jurors.
- 925. — In general.
  - (1). In general.
  - (2). Misconduct of prosecuting witness.
  - (4). Taking notes of evidence.
  - (5). Improper influence inducing agreement to verdict.
- 925.5. — Considering matters not in evidence.
  - (1). In general.
  - (2). Visiting or viewing place of crime.
  - (3). Statements by jurors during deliberation.
  - (4). Access to or reading newspapers.
  - (5). Access to or reading law books.
- 926. — Use of intoxicating liquors.
- 927. — Separation.
  - (1). In general.
  - (2). Separation after submission of case.
  - (3). Separation after agreement or rendition of informal verdict.
  - (4). Separation by consent of court or counsel.

**XXI. MOTIONS FOR NEW TRIAL.(Cont'd)**

- (5). Presumptions and burden of proof as to effect of separation.
- 928. — Communications by or with jurors.
- 929. — Misconduct of officer.
- 930. — Misconduct of bystanders.
- 931. — Necessity of objection at trial.
- 932. — Effect as to result.
- 933. Irregularities or defects in verdict as ground for new trial.
- 934. Verdict contrary to law.
- 935. Verdict contrary to evidence.
  - (5). In general.
  - (1). Weight and sufficiency of evidence in general.
  - (2). Failure of proof.
  - (3). Objections and exceptions.
- 936. Surprise, accident, inadvertence, or mistake.
  - (1). In general.
  - (2). Mistake of counsel.
  - (3). Absence of witness or counsel.
  - (4). Surprise as to testimony of witness.
  - (5). Time for raising question.
  - (6). Effect of failure to ask continuance or postponement.
- 937. Newly discovered evidence.
- 938. — In general.
  - (1). In general.
  - (2). What constitutes newly discovered evidence in general.
  - (3). Facts within knowledge of defendant.
  - (4). Further or other testimony of former witness.
  - (5). Witness rendered competent since trial.
  - (6). Showing mistake at trial.
- 939. — Diligence.
  - (1). In general.
  - (2). In procuring absent witnesses.
  - (3). Failure to ascertain knowledge of witness.
  - (4). Failure to ask continuance.
- 940. — Materiality.
- 941. — Cumulative evidence.
  - (1). In general.
  - (2). What is cumulative evidence.

**110. CRIMINAL LAW****XXI. MOTIONS FOR NEW TRIAL.(Cont'd)**

- 942. — Impeachment of witness.
  - (1). In general.
  - (2). Contradictory statements by witness.
- 943. — Conflicting or contradicted evidence.
- 944. — Credibility.
- 945. — Sufficiency and probable effect.
  - (.5). In general.
  - (1). Probable effect of new evidence, in general.
  - (2). Particular evidence or cases.
- 946. Waiver of right to new trial.
- 947. New trial on court's own motion.
- 948. Application for new trial.
- 948.1. — In general.
- 949. — Form and requisites in general.
  - (1). In general.
  - (2). Verification.
  - (3). Amended and supplemental motions.
- 950. — Jurisdiction.
- 951. — Time for making.
  - (1). In general.
  - (2). Before judgment or sentence.
  - (3). In vacation.
  - (4). At term of conviction.
  - (5). At subsequent term.
  - (6). Amended motion.
- 952. — Parties.
- 953. — Notice.
- 954. — Statement of grounds.
  - (1). In general.
  - (2). Competency of jurors.
  - (3). Misconduct of or affecting jurors.
  - (4). Rulings on evidence.
  - (5). Instructions.
  - (6). Verdict contrary to law or evidence.
  - (7). Scope of assignment.
- 955. — Bill of exceptions or statement of case.
  - (.5). In general.
  - (1). Necessity for bill of exceptions.
  - (2). Sufficiency.
  - (3). Brief of evidence.
- 956. — Affidavits and other proofs in general.

**XXI. MOTIONS FOR NEW TRIAL.(Cont'd)**

- (1). In general.
- (2). Necessity for affidavits in general.
- (3). Counter affidavits.
- (4). Sufficiency of proofs in general.
- (5). Absence of witness.
- (6). Absence of judge.
- (7). Incompetency or neglect of counsel for defense.
- (8). Disqualification of jurors in general.
- (9). Presumptions and burden of proof as to disqualification of jurors.
- (10). Sufficiency of proofs as to disqualification of jurors.
- (11). Misconduct of or affecting jurors in general.
- (12). Presumptions and burden of proof as to misconduct of or affecting jurors.
- (13). Sufficiency of proofs as to misconduct of or affecting jurors.
- 957. — Statements, affidavits, and testimony of jurors.
  - (1). In general.
  - (2). Denying or explaining assent to verdict.
  - (3). Misconduct of jurors, in general.
  - (4). Separation of jury.
  - (5). Consideration by jury of matters not in evidence.
  - (6). Misconduct of others affecting jurors.
- 958. — Affidavits and evidence as to newly discovered evidence.
  - (1). In general.
  - (2). Affidavit by defendant or his counsel.
  - (3). Affidavit as to diligence.
  - (4). Affidavit of proposed witness.
  - (5). Counter affidavits.
  - (6). Sufficiency of proofs in general.
- 959. — Hearing and rehearing in general.
- 960. — Presence of accused at hearing.
- 961. — Determination.
- 962. Grant of new trial ineffectual or not beneficial.
- 964. Order granting or refusing new trial.
- 965. Proceedings at new trial.

**110. CRIMINAL LAW****XXII. ARREST OF JUDGMENT.**

- 966. Nature and scope of remedy by arrest of judgment.
- 967. Grounds for arrest of judgment.
- 968. — In general.
  - (1). In general.
  - (2). Preliminary proceedings.
  - (3). Delay in trial.
  - (4). Want of jurisdiction.
  - (5). Defects or objections as to arraignment or plea.
  - (6). Former jeopardy or pendency of other accusation.
  - (7). Errors and irregularities in conduct of trial.
  - (8). Questions of fact.
  - (9). Instructions and failure or refusal to instruct.
  - (10). Summoning, impaneling, or swearing jury.
  - (11). Disqualification of jurors.
  - (12). Misconduct of or affecting jurors.
  - (13). Defects in record.
- 969. — Statutory provisions.
- 970. — Defects in indictment or information.
  - (1). In general.
  - (2). Presentment, return to court, or filing.
  - (3). Drawing, impaneling, and organization of grand jury.
  - (4). Disqualification of grand jurors.
  - (5). Form and requisites in general.
  - (6). Joinder of offenses.
  - (7). Necessity and sufficiency of allegations in general.
  - (8). Allegations as to venue.
  - (9). Technical defects.
  - (10). Alteration of indictment.
  - (11). Variance.
- 971. — Defects in or objections to verdict.
  - (1). In general.
  - (2). Receiving verdict in absence of judge or defendant.
  - (3). Verdict inconsistent with accusation.
- 972. — Matter not apparent of record in general.
- 973. — Insanity of accused.
- 974. Motions in arrest of judgment.

**XXII. ARREST OF JUDGMENT.(Cont'd)**

- (1). In general.
  - (2). Time for making.
  - (3). Statement of grounds.
  - 975. Order for arrest of judgment.
  - 976. Operation and effect of arrest of judgment.
- XXIII. JUDGMENT.**
- See also SENTENCING AND PUNISHMENT.*  
*See also CONSTITUTIONAL LAW* §4700 et seq.
- 977. Judgment in general.
    - (1). In general.
    - (2). Successor in office or subsequent court.
    - (3). Time of pronouncing judgment.
    - (4). Judgment notwithstanding the verdict.
    - (5). What is a conviction.
  - 978. Constitutional and statutory provisions.
  - 979. Jurisdiction.
    - (1). In general.
    - (2). Loss of jurisdiction.
  - 980. Judgment on pleas of guilty or nolo contendere.
    - (1). In general.
    - (2). Ascertainment of degree of offense.
  - 981. Insanity after conviction.
    - (1). In general.
    - (2). Inquisition as to insanity.
  - 990. Requisites and sufficiency of judgment.
  - 990.1. — In general.
  - 992. — Conformity to verdict.
  - 994. Entry and record of judgment.
    - (1). In general.
    - (2). What constitutes record.
    - (3). Time of entry.
    - (4). Entry nunc pro tunc.
  - 995. Requisites and sufficiency of record of judgment.
 

*Sentence, see SENTENCING AND PUNISHMENT.*

    - (.5). In general.
    - (1). Form.
    - (2). Matters of substance in general.
    - (3). Description of offense.
    - (4). Definiteness and certainty.
    - (5). Fine or fine and imprisonment.
    - (8). Contradiction of, or conflict in, record.

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- 996. Amendment or correction.
  - (1). In general.
  - (2). Time for relief.
  - (3). Proceedings.
- 1000. Certificate of judgment.

**XXIV. REVIEW.**

*Excludes prosecutions for violation of municipal ordinances, see MUNICIPAL CORPORATIONS ¶642. See also CONSTITUTIONAL LAW ¶3815, 4765 et seq.*

**(A) NATURE AND FORM OF REMEDY.**

- 1004. Nature and scope of remedy in general.
- 1005. Constitutional and statutory provisions.
- 1006. Proper mode of review.
- 1006.1. — In general.
- 1007. — Appeal.
- 1008. — Writ of error.
- 1009. — Exceptions.
- 1010. — Reservation and report or certification of cases or questions.
- 1011. — Certiorari.
- 1012. Existence of other remedy.
- 1013. Election or pendency of other proceeding.
- 1014. Successive appeals or other proceedings.
- 1015. Joinder of proceedings.

**(B) NATURE AND GROUNDS OF APPELLATE JURISDICTION.**

- 1016. Appellate jurisdiction.
- 1017. — In general.
- 1018. — Courts invested with jurisdiction.
- 1019. — Nature or grade of offense.
- 1020. — Extent of penalty.
- 1020.5. — Transfer of causes.

**(C) DECISIONS REVIEWABLE.**

- 1021. Decisions reviewable.
- 1021.1. — In general.
- 1022. — Courts and other tribunals subject to review.
- 1023. — Appealable judgments and orders.
  - (1). In general.
  - (2). Finality of determination in general.

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- (3). Preliminary or interlocutory orders in general.
- (4). Relating to jury.
- (5). Relating to verdict.
- (6). On motion for change of venue.
- (7). Order directing mistrial.
- (8). On demurrer or motion to quash indictment or to arrest judgment.
- (9). Necessity of sentence.
- (10). Necessity of entering judgment.
- (11). Requisites and sufficiency of judgment or sentence.
- (12). Orders after judgment in general.
- (13). On motion for new trial.
- (14). Modification or correction of judgment, sentence, or record; resentencing.
- (15). On motion to set aside judgment or coram nobis.
- (16). Probation or suspension of sentence.

**(D) RIGHT OF REVIEW.**

- 1023.5. Right to review in general.
- 1024. Right of prosecution to review.
  - (1). In general.
  - (2). Discharge of defendant in general.
  - (3). Indictment quashed or held bad on demurrer or plea.
  - (4). Arrest of judgment.
  - (5). Verdict or judgment of acquittal.
  - (6). Disagreement of jury.
  - (7). Order for new trial.
  - (8). Judgment of intermediate court.
  - (9). Nature or grade of offense and extent of penalty.
  - (10). Purpose of appeal.
  - (11). Cross-appeal by state.
  - (12). Taxation of costs.
  - (13). Revenue cases.
- 1025. Right of defendant to review.
- 1026. — In general.
- 1026.10. — Waiver or loss of right.
  - (1). In general.
  - (2). Plea of guilty or nolo contendere.
    - (2.1). — In general.

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- (3). — Exhaustion of remedies in lower court.
- (4). — Issues considered.
- (5). — Contingent or conditional plea; reservation of right.
- (6). Acquiescence or acceptance of benefits.
- (7). Escape.
- (8). Evidence.
- 1027. — Codefendants.
- (E) PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW.**
- 1. IN GENERAL.**
- 1028. Presentation of questions in general.
- 1030. Necessity of objections in general.
  - (1). In general.
  - (2). Constitutional questions.
  - (3). Criminal liability.
  - (4). Questions in intermediate courts.
- 1031. In preliminary proceedings.
  - (1). In general.
  - (2). Competency of grand jurors.
  - (3). Summoning, impaneling, and organization of grand jury.
  - (4). Arraignment and plea.
  - (5). Transfer of cause.
- 1032. Indictment or information.
  - (1). In general.
  - (2). Finding and filing of indictment.
  - (3). Formal requisites of indictment.
  - (4). Filing and formal requisites of information or complaint.
  - (5). Requisites and sufficiency of accusation.
  - (6). Duplicity.
  - (7). Issues, proof, and variance.
- 1033.1. Jurisdiction.
- 1033.2. Venue.
- 1034. Continuance.
- 1035. Proceedings at trial in general.
  - (1). In general.
  - (2). Preliminary proceedings.
  - (3). Course and conduct of trial in general.
  - (4). Trial by special judge.
  - (5). Competency of jurors and challenges.

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- (6). Summoning and impaneling jury.
- (7). Counsel for accused.
- (8). Remarks and conduct of judge.
- (8.1). — In general.
- (9). — Comments on evidence and witnesses.
- (10). Reception of evidence.
- 1036. Evidence.
- 1036.1. — In general.
  - (1). Objections to evidence in general.
  - (2). Time of objection.
  - (3). Particular evidence.
  - (3.1). — In general.
  - (4). — Wrongfully obtained evidence.
  - (5). — Confessions, declarations, and admissions.
  - (6). — Documentary evidence.
  - (7). — Identification evidence.
  - (8). — Other offenses and character of accused.
  - (9). Exclusion of evidence.
- 1036.3. — Purpose and effect of evidence.
- 1036.4. — Best and secondary and demonstrative evidence.
- 1036.5. — Hearsay.
- 1036.6. — Opinion evidence.
- 1036.7. — Testimony at former trial or in other proceeding.
- 1036.8. — Sufficiency of evidence.
- 1036.9. — Waiver of objections.
- 1036.10. Witnesses.
- 1037. Arguments and conduct of counsel.
- 1037.1. — In general.
  - (1). Arguments and conduct in general.
  - (2). Particular statements, arguments, and comments.
  - (3). Presentation of evidence.
  - (4). Time for objection.
- 1037.2. — Requests for correction by court.
- 1038. Instructions.
- 1038.1. — Objections in general.
  - (1). In general.
  - (2). Plain or fundamental error.
  - (3). Particular instructions.
  - (3.1). — In general.

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- (4). — Elements of offense and defenses.
- (5). — Evidence and witnesses.
- (6). Form, language, preparation, and delivery; definition of terms.
- (7). Time for, and form of, objection.
- 1038.2. — Failure to instruct in general.
- 1038.3. — Necessity of requests.
- 1038.4. — Necessity of written requests.
- 1039. Issues related to jury trial.
- 1040. Verdict.
- 1041. Motion for new trial or in arrest.
- 1042. Judgment.
- 1042.3. Sentencing and punishment.
  - (1). In general.
  - (2). Sentencing proceedings in general.
  - (3). Right to jury determination.
  - (4). Probation and related dispositions.
  - (5). Restitution.
- 1042.5. Habitual and second offenders.
- 1042.6. Costs.
- 1042.7. Proceedings after judgment.
  - (1). In general.
  - (2). Post-conviction relief.
- 1043. Scope and effect of objection.
  - (1). In general.
  - (2). Necessity of specific objection.
  - (3). Adding to or changing grounds of objection.
- 1044. Motion presenting objection.
- 1044.1. — In general; necessity of motion.
  - (1). In general.
  - (2). Preliminary proceedings; indictment, information, or complaint.
  - (3). Conduct of trial in general.
  - (4). Competency and examination of witnesses.
  - (5). Admission or exclusion of evidence.
    - (5.1). — In general.
  - (6). — Wrongfully obtained evidence, admission of.
  - (7). Sufficiency of evidence.
  - (8). Arguments and conduct of counsel.

**XXIV. REVIEW.(Cont'd)**

- 1044.2. — Sufficiency and scope of motion.
  - (1). In general.
  - (2). Renewal of motion.
- 1045. Necessity of ruling on objection or motion.

**2. EXCEPTIONS.**

- 1048. Necessity of exceptions in general.
- 1049. Review of rulings in preliminary proceedings.
- 1050. Review of rulings as to indictment or pleas.
- 1051. Review of rulings as to jurisdiction and venue.
- 1052. Review of rulings as to continuance.
- 1053. Review of proceedings at trial in general.
- 1054. Review of rulings on evidence.
  - (1). In general.
  - (2). Competency of witnesses.
  - (3). Sufficiency of evidence.
- 1055. Review of rulings as to arguments or conduct of counsel.
- 1056. Review of instructions and failure or refusal to give instructions.
- 1056.1. — In general.
  - (1). Instructions in general.
  - (2). Failure or refusal to instruct in general.
  - (3). Particular instructions.
    - (3.1). — In general.
  - (4). — Instructions omitted or refused.
  - (5). Plain or fundamental error.
- 1056.2. — Statutory provisions.
- 1057. Exceptions to verdict.
- 1058. Exceptions to sentence or judgment.
- 1059. Scope and effect of exception.
  - (1). In general.
  - (2). Necessity of specific exception.
  - (3). Adding to or changing grounds of exception.
- 1060. Necessity of ruling on exceptions.

**3. MOTIONS FOR NEW TRIAL OR IN ARREST.**

- 1063. Necessity of motion for new trial or in arrest.
  - (1). In general.

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- (2). Indictment and information.
- (3). Defects in preliminary proceedings.
- (4). Sufficiency of evidence.
- (5). Proceedings at trial in general.
- (6). Instructions.
- (7). Review on direct bill of exceptions.
- 1064. Statement of grounds for new trial or in arrest.
  - (1). In general.
  - (2). Indictment.
  - (3). Preliminary proceedings.
  - (4). Admission or exclusion of evidence.
  - (5). Sufficiency of evidence.
  - (6). Proceedings at trial in general.
  - (7). Instructions.
  - (8). Misconduct of jury.
- 1064.5. Authentication of statement of grounds for new trial.
- 1065. Necessity of ruling or order on motion for new trial.
- 1066. Exceptions to decision on motion for new trial or in arrest.

**4. RESERVED OR CERTIFIED QUESTIONS.**

- 1068. Cases and questions reserved or certified.

**(F) PROCEEDINGS, GENERALLY.**

- 1068.5. Proceedings in general.
- 1069. Time of taking proceedings.
  - (1). In general.
  - (2). Statutory provisions.
  - (3). Term at which appeal must be taken.
  - (4). Term to which appeal must be taken.
  - (5). Commencement of period of limitations.
  - (6). Effect of delay.
- 1070. Parties.
- 1070.5. Announcement or allowance in open court.
- 1071. Petition or prayer.
- 1072. Allowance or leave from appellate court.

**XXIV. REVIEW.(Cont'd)**

- 1073. Certificate of probable cause or reasonable doubt.
- 1074. Affidavits.
- 1078. Certification of appeal.
- 1079. Appellate process or notice in general.
- 1080. Writ of error.
- 1081. Notice of appeal.
  - (1). In general.
  - (2). Form and requisites.
  - (3). Service.
  - (4). Time of giving.
  - (4.1). — In general.
  - (5). — Effect of delay.
  - (6). — Excuse for delay; extension of time and relief from default.
- 1081.5. Writ of certiorari and answer or return thereto.
- 1082. Entry or docketing.
- 1083. Effect of transfer or proceedings therefor.
- 1084. Supersedeas or stay of proceedings.

**(G) RECORD AND PROCEEDINGS  
NOT IN RECORD.****1. MATTERS TO BE SHOWN BY RECORD.**

- 1086.1. Proceedings sustaining judgment or order in general.
- 1086.2. Jurisdiction of lower court.
- 1086.3. Appointment of special judge.
- 1086.4. Grounds of review in general.
- 1086.5. Change of venue or transfer of cause.
- 1086.6. Proof of venue.
- 1086.7. Matters relating to grand jury.
- 1086.8. Indictment, information, or complaint.
- 1086.9. Arraignment and plea.
- 1086.10. Matters relating to petit jury.
- 1086.11. Proceedings at trial in general.
- 1086.12. Presence of accused.
- 1086.13. Verdict, judgment, and sentence.
- 1086.14. Presentation and reservation of grounds of review.
- 1087.1. Taking and perfecting appeal or other proceeding for review.
  - (1). In general.
  - (2). Process or notice.



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- 1087.2. Making and filing bill of exceptions, case, or statement of facts.  
 1087.3. Incorporating evidence.

**2. SCOPE AND CONTENTS OF RECORD.**

- 1088.1. In general.  
 1088.2. Proof of venue.  
 1088.3. Matters relating to grand jury.  
 1088.4. Indictment, information, or complaint.  
 1088.5. Affidavits.  
 1088.6. Motions.  
 1088.7. Arraignment and plea.  
 1088.8. Matters relating to petit jury.  
 1088.9. Presence of accused and counsel.  
 1088.10. Evidence.  
 1088.11. Instructions.  
 1088.12. Verdict, judgment, or sentence.  
 1088.13. Opinions.  
 1088.14. Bill of exceptions.  
 1088.15. Papers referred to in record.  
 1088.16. Official certificates or statements accompanying transcript.  
 1088.17. Affidavits accompanying or supplementing transcript.  
 1088.18. Effect of incorporating matters of record in bill of exceptions.  
 1088.19. Matters improperly included.  
 1088.20. Loss or destruction of record.

**3. BILL OF EXCEPTIONS.**

1090. Necessity.  
 1090.1. — In general.  
     (1). In general.  
     (2). Review on record, and errors on face thereof.  
     (3). Particular matters, review of.  
 1090.2. — Statutory provisions.  
 1090.3. — Venue.  
 1090.4. — Preliminary proceedings.  
 1090.5. — Indictment, information, or complaint.  
 1090.6. — Arraignment and plea.  
 1090.7. — Continuance.  
 1090.8. — Evidence.  
 1090.9. — Competency of witnesses.  
 1090.10. — Affidavits.  
 1090.11. — Proceedings at trial in general.

**XXIV. REVIEW.(Cont'd)**

- 1090.12. — Matters relating to petit jury.  
 1090.13. — Arguments and conduct of counsel.  
 1090.14. — Instructions.  
 1090.15. — Verdict, judgment, or sentence.  
 1090.16. — New trial.  
 1090.17. — Motions in arrest.  
 1090.18. — Presentation of exceptions taken.  
 1090.19. — Substitutes.  
 1091. Form and contents.  
     (1). In general.  
     (2). Setting forth errors or irregularities in general.  
     (3). Showing as to examination and impeachment of witnesses.  
     (4). Setting forth errors or irregularities in admission of evidence.  
     (5). Setting forth errors and irregularities in exclusion of evidence.  
     (6). Showing that testimony was used at trial.  
     (7). Showing errors and irregularities as to petit jury.  
     (8). Showing as to improper argument or conduct of counsel.  
     (9). Setting forth errors and irregularities as to instructions.  
     (10). Setting forth objections, rulings, and exceptions.  
     (11). Incorporation of evidence.  
     (12). Incorporating instructions.  
     (13). Insertion of documents or proceedings.  
     (14). Number of bills.  
     (15). Construction of bill.  
 1092. Settlement, signing, and filing.  
 1092.1. — In general.  
 1092.2. — Notice of presentation for settlement.  
 1092.3. — Duty to prepare bill.  
 1092.4. — Time for presentation, allowance, or filing in general.  
 1092.5. — Settlement, allowance, or filing during term.  
 1092.6. — Settlement, allowance, or filing after term.  
 1092.7. — Time prescribed or allowed.

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- 1092.8. — Compliance with requirements as to time.
- 1092.9. — Extension of time.
- 1092.10. — Compelling allowance or settlement.
- 1092.11. — Allowance or settlement.
  - (1). In general.
  - (2). Necessity of approval, and effect of refusal or disallowance.
  - (3). Qualification or explanation by court.
- 1092.12. — Procuring signatures of bystanders.
- 1092.13. — Signature and seal.
- 1092.14. — Certificate.
- 1092.15. — Service.
- 1092.16. — Filing.
- 1092.17. — Amended or supplemental bills.
- 1092.18. — Exceptions pendente lite.
- 1093. Scope and sufficiency.
- 1094. Effect of failure to make.
  - (1). In general.
  - (2). Affirmance.
  - (2.1). — In general.
  - (3). — Affirmance where proceedings appear regular.
- 1095. Striking out.

**4. CASE OR STATEMENT OF FACTS.**

- 1097. Necessity.
  - (1). In general.
  - (2). Arraignment and plea.
  - (3). Continuance.
  - (4). Evidence.
  - (5). Instructions.
  - (6). New trial.
- 1098. Form and contents.
- 1099. Settlement, signing, and filing.
- 1099.1. — In general.
- 1099.2. — Duty to prepare statement.
- 1099.3. — Service of proposed case or statement.
- 1099.4. — Service of counter case.
- 1099.5. — Settlement, allowance, or filing after term.
- 1099.6. — Time prescribed or allowed.
  - (1). In general.

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- (2). Extension of time.
- (2.1). — In general.
- (3). — Time for extension; further extensions.
- 1099.7. — Due diligence and compliance with time requirements.
  - (1). In general.
  - (2). Computation of time.
  - (3). Effect of noncompliance.
  - (4). Excuse for delay.
- 1099.8. — Laches of judge, prosecuting attorney, or clerk.
- 1099.9. — Filing nunc pro tunc.
- 1099.10. — Signature and seal.
- 1099.11. — Certificate.
- 1099.12. — Service.
- 1099.13. — Filing.
- 1099.14. — Amended or supplemental statements.
- 1100. Scope and sufficiency.
- 1101. Effect of failure to make.
- 1102. Striking out.

**5. ABSTRACTS OF RECORD.**

- 1103. In general.

**6. TRANSCRIPT OR RETURN.**

- 1104. In general.
  - (.5). In general.
  - (1). Necessity.
  - (2). Caption.
  - (3). Form and contents in general.
  - (4). Original papers.
  - (5). Index and marginal notes.
  - (6). Proceedings for preparation.
  - (7). Supplemental transcript or return.
  - (8). Paper books.

**7. AUTHENTICATION AND CERTIFICATION.**

- 1105. In general.
  - (.5). In general.
  - (1). Necessity.
  - (2). Sufficiency.

**8. TRANSMISSION AND FILING.**

- 1106. In general.
  - (1). In general.
  - (2). Time for transmission or filing.

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- (3). Failure to file in time.
- (4). Loss, destruction, or withdrawal from files.

**9. PRINTING.**

1107. In general.

**10. SERVICE OF COPIES.**

1108. In general.

**11. DEFECTS AND OBJECTIONS.**

1109. In general.
- (1). In general.
  - (2). Estoppel or waiver.
  - (3). Operation and effect.

**12. AMENDMENT AND CORRECTION.**

1110. In general.
- (1). In general.
  - (2). Power to amend and correct errors.
  - (3). Defects amendable.
  - (4). By stipulation.
  - (5). Time.
  - (6). Proceedings for amendment or correction.
  - (7). Supplying omissions.
  - (8). Certiorari to bring up record.
  - (9). Remission to lower court for correction of defects.

**13. CONCLUSIVENESS AND EFFECT.**

1111. In general.
- (1). In general.
  - (2). Conclusiveness of recitals.
  - (3). Conclusiveness of bill of exceptions, case, or statement of facts.
  - (4). Conclusiveness of certificate.
  - (5). Conflict in record.

**14. IMPEACHING OR CONTRADICTING.**

1112. In general.

**15. QUESTIONS PRESENTED FOR REVIEW.**

1113. Questions presented for review.
1114. — In general.
- 1114.1. — Limitation by scope of record.
- (1). In general.

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- (2). Bill of exceptions, case or statement of facts.
  - (3). Omission of evidence.
1115. — Preliminary proceedings.
- (1). In general.
  - (2). Selection and impaneling of jury.
1116. — Indictment and pleas.
1117. — Venue or change of venue.
1118. — Time of trial; continuance.
1119. — Conduct of trial in general.
- (1). In general.
  - (2). Reception of evidence.
  - (3). Misconduct of judge.
  - (4). Argument and conduct of counsel.
  - (5). Conduct and deliberations of jury.
1120. — Admissibility of evidence.
- (1). In general.
  - (2). Necessity of showing that evidence was received at trial.
  - (3). Necessity of setting forth evidence excluded.
  - (4). Necessity of setting forth evidence admitted.
  - (5). Necessity of setting forth all the evidence.
  - (6). Necessity of setting forth grounds of admissibility.
  - (7). Necessity of showing purpose of evidence.
  - (8). Necessity of showing grounds of objection or ruling.
  - (9). Documentary evidence.
  - (10). Competency of witnesses.
1121. — Sufficiency of evidence.
- (1). In general.
  - (2). Necessity of setting forth all the evidence.
  - (3). Necessity of recital or certificate that all the evidence is included.
  - (4). Sufficiency of recital or certificate that all the evidence is included.
1122. — Instructions, and failure or refusal to give instructions.
- (1). In general.
  - (2). Necessity of setting forth grounds of objection.
  - (3). Necessity of setting forth evidence to review instructions given.

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- (4). Necessity of setting forth evidence to review instructions refused.
- (5). Necessity of setting forth instructions given or refused.
- (6). Necessity of showing request.
- 1123. — Verdict.
- 1124. — Grounds for new trial.
  - (1). In general.
  - (2). Necessity of setting forth grounds of motion or ruling.
  - (3). Necessity of setting forth evidence given on trial.
  - (4). Necessity of setting forth proceedings and evidence on motion.
- 1125. — Grounds for arrest of judgment.
- 1126. — Sentence or judgment.
- 1127. — Questions arising after judgment.

**16. MATTERS NOT APPARENT OF RECORD.**

- 1128. In general.
  - (1). In general.
  - (2). Matters appearing otherwise than by record.
  - (4). Evidence presented to appellate court.

**(H) ASSIGNMENT OF ERRORS.**

- 1129. In general.
  - (.5). In general.
  - (1). Necessity.
  - (2). Form and requisites in general.
  - (3). Specification of errors.
  - (4). Including errors in one assignment.
  - (5). Amendment.
  - (6). Scope and effect of assignment.
  - (7). Pleading to assignment and joinder in error.
  - (8). Time for filing.

**(I) BRIEFS.**

- 1130. In general.
  - (.5). In general.
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  - (2). Specification of errors.
  - (3). Form.
  - (4). Filing and service (failure to file or to file in time).

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- (5). Points and authorities.
- (6). Reply briefs.

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  - (3). Motion to dismiss.
  - (4). Grounds of dismissal in general.
  - (5). Escape of accused as grounds of dismissal.
  - (6). Striking cause from docket.
  - (7). Reinstatement of appeal.

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- 1134.4. Searches and seizures.
- 1134.5. Grand jury and indictment.
- 1134.6. Arraignment and plea.
- 1134.7. Summoning, impaneling, or selection of jury.
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- 1134.9. Competency to stand trial.
- 1134.10. Continuance.
- 1134.11. Time for trial.
- 1134.12. Joinder and severance.
- 1134.13. Discovery and disclosure.
- 1134.14. Conduct of trial in general.
- 1134.15. Counsel.
- 1134.16. Arguments and conduct of counsel.
- 1134.17. Evidence.
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  - (3). Weight and sufficiency.
- 1134.18. Witnesses.
- 1134.19. Instructions.
- 1134.20. Issues related to jury trial.
- 1134.21. Verdict and findings.

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- 1134.23. Sentencing.

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- 1134.25. Ripeness.
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- 1134.31. Substituting opinion of appellate court in general.
- 1134.32. Particular issues in general.
- 1134.33. Defenses.
- 1134.34. Arrest.
- 1134.35. Searches and seizures.
- 1134.36. Grand jury and indictment.
- 1134.37. Arraignment and plea.
- 1134.38. Summoning, impaneling, or selection of jury.
- 1134.39. Jurisdiction and venue.
- 1134.40. Competency to stand trial.
- 1134.41. Continuance.
- 1134.42. Time for trial.
- 1134.43. Joinder and severance.
- 1134.44. Discovery and disclosure.
- 1134.45. Conduct of trial in general.
- 1134.46. Recusal or conduct of trial judge.
- 1134.47. Counsel.
  - (1). In general.
  - (2). Right to counsel.
  - (3). Effective assistance.
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- 1134.48. Reception of evidence.
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  - (1). In general.
  - (2). Identification.
  - (3). Statements, confessions, and admissions.
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  - (5). Opinion testimony.
  - (6). Other offenses.
  - (7). Weight and sufficiency of evidence.

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- 1134.50. Witnesses.
- 1134.51. Instructions.
- 1134.52. Issues related to jury trial.
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- 1134.70. In general.
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- 1134.76. Consecutive or cumulative sentences.
- 1134.77. Application of guidelines.
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- 1134.90. In general.

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- (5). Admission of evidence.
- (6). Exclusion of evidence.
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1139. In general.

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  - (1). In general.
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- 1142. Matters shown by record.
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- 1144.1. — In general; complaint, warrant, and preliminary examination.
- 1144.2. — Organization and proceedings of grand jury.
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- 1144.5. — Organization and jurisdiction of trial court.
- 1144.6. — Venue.
- 1144.7. — Time of trial and continuance.
- 1144.8. — Selection and impaneling of jury.
- 1144.9. — Preliminary proceedings.
- 1144.10. — Conduct of trial in general.
- 1144.11. — Presence of accused.
- 1144.12. — Reception of evidence.
- 1144.13. — Sufficiency of evidence.
  - (1). In general.
  - (2). Construction of evidence.
    - (2.1). — In general.
  - (3). — Construction in favor of government, state, or prosecution.
  - (4). Evidence accepted as true.
  - (5). Inferences or deductions from evidence.
  - (6). Evidence considered; conflicting evidence.
  - (7). Particular issues or elements.
  - (8). Particular offenses.

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  - 1144.15. — Custody and conduct of jury.
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  - 1144.18. — New trial and arrest of judgment.
  - 1144.19. — Proceedings for review.
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- 1147. In general.
  - 1148. Preliminary proceedings.
  - 1149. Amendments and rulings as to indictment or pleas.
  - 1150. Change of venue.
  - 1151. Time of trial; continuance.
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    - 1152.1. — In general.
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- 1152.19. — Counsel.
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- (2). Cross-examination.
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- 1156. New trial.
  - (1). In general.
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- 1156.1. Sentencing.
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- 1156.4. — Consecutive or cumulative sentencing.
- 1156.5. — Habitual offenders.
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- 1156.8. — Alternative dispositions.
- 1156.9. — Restitution.
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- 1158.3. Indictment and information.
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- 1158.5. Jurisdiction and venue.
- 1158.6. Bail.
- 1158.7. Pleas.
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- 1158.9. — In general.
- 1158.10. — Identification.
- 1158.11. — Other offenses.
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- 1158.13. — Admission, statements, and confessions.
- 1158.14. — Hearsay.
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- 1158.18. Speedy trial.
- 1158.19. Continuance.
- 1158.20. Preliminary proceedings.
- 1158.21. — In general.
- 1158.22. — Joinder.
- 1158.23. — Competency to stand trial.
- 1158.24. — Discovery and disclosure.
- 1158.25. — Pretrial motions.
- 1158.26. Course and conduct of trial.
- 1158.27. — In general.
- 1158.28. — Counsel.
- 1158.29. — Mistrial.
- 1158.30. Reception of evidence.
- 1158.31. Arguments and conduct of counsel.
- 1158.32. Instructions.
- 1158.33. Issues related to jury trial.
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- 1159. Conclusiveness of verdict.
- 1159.1. — In general.
- 1159.2. — Weight of evidence in general.
  - (1). In general.
  - (2). Verdict unsupported by evidence or contrary to evidence.
  - (3). Verdict supported by evidence.
  - (4). Quantum of evidence in general.
  - (5). Substantial evidence.
  - (6). “Some” or “any” evidence.
  - (7). Reasonable doubt.
  - (8). Inferences or hypotheses from evidence.
  - (9). Weighing evidence.
  - (10). Particular offenses and prosecutions.
- 1159.3. — Conflicting evidence.
  - (1). In general.
  - (2). Province of jury or trial court.
  - (3). Verdict supported by evidence.
  - (3.1). — In general.

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- (4). — Substantial evidence; “some” or “any” evidence.
- (5). Verdict against evidence or weight of evidence; passion or prejudice.
- (6). Particular offenses and prosecutions.
- 1159.4. — Credibility of witnesses.
  - (1). In general.
  - (2). Province of jury or trial court.
  - (3). Character of witnesses or testimony in general.
  - (4). Inherently improbable or incredible testimony; apparent falsity.
  - (5). Particular offenses and prosecutions.
  - (6). Particular witnesses or grounds of impeachment.
- 1159.5. — Particular issues or elements.
- 1159.6. — Circumstantial evidence.
- 1159.7. — Successive verdicts.
- 1160. Approval of verdict by trial court.

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- 1162. Prejudice to rights of party as ground of review.
- 1163. Presumption as to effect of error; burden.
  - (1). In general.
  - (2). Conduct of trial in general.
  - (3). Rulings as to evidence.
  - (4). Instructions in general.
  - (5). Refusal of requests or failure to give proper instructions.
  - (6). Misconduct of or affecting jurors.
- 1164. Prejudice to prosecution.
- 1165. Prejudice to defendant in general.
  - (1). In general.
  - (2). Technical or trivial errors.
  - (3). Errors favorable to defendant.
- 1166. Preliminary proceedings.
  - (1). In general.
  - (1.10). Counsel at preliminary hearing.
  - (2). Organization and proceedings of grand jury.
  - (3). Arraignment.
  - (4). Venue.
  - (6). Joinder or severance of counts or codefendants.



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- (7). Time for trial or hearing; continuance.
- (10.10). Discovery and disclosure; transcripts of prior proceedings.
- (11). Endorsing or listing witnesses.
- (12). Mental examination; determination of competency.
- 1166.5. Conduct of trial in general.  
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- 1166.6. — In general.
- 1166.7. — Public or open trial; spectators; publicity.
- 1166.8. — Custody or restraint of accused; prison clothes.
- 1166.9. — Counsel for prosecution.
- 1166.10. — Counsel for accused.
  - (1). In general.
  - (2). Appointment; waiver; appearance pro se.
  - (3). Conflict of interest; joint representation.
- 1166.12. — Refusal to allow counsel for accused to withdraw.
- 1166.13. — Absence of stenographer or other ministerial officer.
- 1166.14. — Absence of accused.
- 1166.15. — Drawing and summoning jury.
- 1166.16. — Impaneling jury in general.
- 1166.17. — Sustaining challenges to jurors.
- 1166.18. — Overruling challenges to jurors.
- 1166.19. — Swearing jury.
- 1166.20. — Reading statute or indictment to jury.
- 1166.21. — Absence of judge during trial.
- 1166.22. — Remarks and conduct of judge.
  - (1). In general.
  - (2). Nature of remarks in general.
  - (3). Argument and conduct of counsel, remarks as to.
  - (4). Comments on evidence or witnesses.
    - (4.1). — In general.
  - (5). — Examination of witnesses.
  - (6). — Ruling on admissibility of evidence, remarks in.

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- (7). — Expressions as to weight and sufficiency of evidence and guilt of accused.
- 1166.23. — Conversations between judge and attorney.
- 1167. Rulings as to indictment or pleas.
  - (1). Indictment or information in general.
  - (2). Rulings on indictment or information containing several counts.
  - (3). Motion to quash or strike out.
  - (4). Amendment.
  - (5). Plea or demurrer.
  - (6). Errors favorable to defendant.
- 1168. Rulings as to evidence in general.
  - (1). In general.
  - (2). Reception of evidence.
  - (3). Rulings as to competency of witnesses.
  - (4). Rulings on motion to strike out evidence.
  - (5). Rulings on demurrer to evidence.
  - (6). Errors favorable to accused.
- 1169. Admission of evidence.
- 1169.1. — In general.
  - (1). Evidence in general.
  - (2). Particular offenses and prosecutions.
    - (2.1). — In general.
  - (3). — Assault, homicide, kidnapping, and abortion.
  - (4). — Burglary, robbery, larceny, and embezzlement; stolen property.
  - (5). Arrest and identification, evidence relating to.
  - (6). Character or reputation of accused.
  - (7). Immaterial or incompetent evidence in general.
  - (8). Evidence wrongfully obtained.
  - (9). Hearsay.
  - (10). Documentary and demonstrative evidence.
- 1169.2. — Curing error by facts established otherwise.
  - (1). In general.
  - (2). Particular evidence or prosecutions.

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- (3). Other offenses and character of accused.
- (4). Immaterial and incompetent evidence in general.
- (5). Illegally obtained evidence.
- (6). Admissions, declarations, and hearsay; confessions.
- (7). Documentary and demonstrative evidence.
- (8). Opinions and conclusions.
- 1169.3. — Curing error by facts admitted by defendant.
- 1169.4. — Curing error by evidence being made proper subsequently.
- 1169.5. — Curing error by withdrawal, striking out, or instructions to jury.
  - (1). In general.
  - (2). Particular evidence or prosecutions.
  - (3). Other offenses and character of accused.
  - (4). Immaterial or incompetent evidence in general.
  - (5). Admissions, declarations, and hearsay; confessions.
- 1169.6. — Curing error by verdict or determination.
- 1169.7. — Acts, declarations, and admissions of accomplices and codefendants.
- 1169.8. — Errors favorable to accused.
- 1169.9. — Opinion evidence.
- 1169.10. — Parol or secondary evidence.
- 1169.11. — Evidence of other offenses and misconduct.
- 1169.12. — Acts, admissions, declarations, and confessions of accused.
- 1170. Exclusion of evidence.
  - (1). In general.
  - (2). Curing error by other evidence of same fact.
  - (3). Prior or subsequent admission of same evidence.
  - (4). Prior or subsequent examination of same witness.
  - (5). Effect of verdict or determination.
- 1170.5. Witnesses.
  - (1). In general.

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- (1.5). Failure or refusal of prosecution to call witness and failure of witness to appear when called by defense.
- (2). Error in question cured by answer.
- (3). Error in question not answered.
- (4). Swearing witness.
- (5). Cross-examination.
- (5.5). Examination by court.
- (6). Error cured by rulings and instructions of court.
- 1171. Arguments and conduct of counsel.
- 1171.1. — In general.
  - (1). Conduct of counsel in general.
  - (2). Statements as to facts, comments, and arguments.
  - (2.1). — In general.
  - (3). — Particular statements, comments, and arguments.
  - (4). — Comments on defense counsel.
  - (5). — Comments on failure to produce witnesses or evidence.
  - (6). — Appeals to sympathy or prejudice; argument as to punishment.
- 1171.2. — Opening statement.
- 1171.3. — Comments on evidence or witnesses, or matters not sustained by evidence.
- 1171.4. — Limitation of time of argument.
- 1171.5. — Comments on failure of accused to testify.
- 1171.6. — Comments on character or conduct of accused or prosecutor.
- 1171.7. — Responsive statements and remarks.
- 1171.8. — Presentation of evidence.
  - (1). In general.
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- 1172. Instructions.
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  - (1). Instructions in general.
  - (2). Particular instructions.
  - (2.1). — In general.
  - (3). — Elements and incidents of offense; definitions.
  - (4). — Defenses.

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- (4.1). — Grade or degree of offense; lesser-included offenses.
- (4.2). — Law of parties; aiding and abetting, accessories, principals.
- (4.3). — Deliberations; unanimity.
- (4.4). — Verdict form.
- (5). Form and language; procedure in giving instructions.
- 1172.2. — Instruction as to evidence.
- 1172.3. — Invasion of province of jury.
- 1172.4. — Contradictory instructions.
- 1172.6. — Inapplicable to issue or evidence.
- 1172.7. — Errors favorable to defendant.
- 1172.8. — Effect of verdict or determination.
- 1172.9. — Instructions as to punishment.
- 1172.10. — Oral instructions.
- 1172.11. — Signature and filing of instructions.
- 1173. Failure or refusal to give instructions.
- 1173.1. — In general.
- 1173.2. — Instructions on particular points.
  - (1). In general.
  - (2). Elements and incidents of offense.
  - (3). Defenses.
  - (4). Grade or degree of offense; included offenses; punishment.
  - (5). Evidence in general.
  - (6). Testimony of accomplices and co-defendants.
  - (7). Admissions and confessions.
  - (8). Weight and sufficiency of evidence in general.
  - (9). Purpose and effect of evidence; excluding evidence from consideration.
  - (10). Circumstantial evidence.
- 1173.3. — Effect of verdict or determination.
- 1173.4. — Modification of request.
- 1173.5. — Errors favorable to accused.
- 1174. Conduct and deliberations of jury.
  - (1). In general.
  - (2). Misconduct of jurors in general.
  - (3). Use of intoxicating liquor.

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- (4). Separation of jury.
- (5). Communications by or with jurors.
- (6). Taking documents or evidence to jury room.
- (7). Misconduct of officer in charge.
- 1175. Verdict or findings.
- 1176. Decisions on motion for new trial.
- 1177. Judgment.
- 1177.3. Sentencing and punishment.
  - (1). In general.
  - (2). Sentencing proceedings in general.
  - (3). Right to jury determination.
  - (4). Probation and related dispositions.
  - (5). Restitution.
- 1177.5. Habitual and second offenders.
  - (1). In general.
  - (2). Admission or exclusion of evidence.
  - (3). Instructions.
- 1177.6. Costs.
- 1177.7. Proceedings after judgment.
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- 1178. In general.
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- 1179. In general.
- (T) SUBSEQUENT APPEALS.**
- 1180. In general.
- (U) DETERMINATION AND DISPOSITION OF CAUSE.**
- 1181. Decision in general.
  - (1). In general.
  - (2). Effect of change in law or facts.
- 1181.5. Remand in general; vacation.
  - (1). In general.
  - (2). Remand for amplification of record.
  - (3). Remand for determination or reconsideration of particular matters.
- (3.1). — In general.
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- (6). — Counsel for accused.
- (7). — Admissibility of evidence; arrest and search.
- (8). — Sentence.
- (9). — Habitual and second offenders.
- 1182. Affirmance.
- 1184. Modification or correction of judgment or sentence.
  - (1). In general.
  - (2). Description of offense.
  - (3). Grade or degree of offense.
  - (4). Sentence or punishment.
  - (4.1). — In general.
  - (5). — Application of indeterminate sentence law.
- 1185. Reversal.
- 1186.1. — Grounds in general.
- 1186.2. — Statutory provisions.
- 1186.3. — Defects in indictment or information.
- 1186.4. — Technical, formal or trivial defects or errors.
  - (1). In general.
  - (2). Indictment or information.
  - (3). Conduct of trial in general.
  - (4). Rulings as to evidence in general.
  - (5). Admission of evidence.
  - (6). Examination of witnesses.
  - (7). Argument and conduct of counsel.
  - (8). Instructions.
  - (9). Failure or refusal to instruct.
  - (10). Conduct and deliberations of jury.
  - (11). Verdict, sentence, and judgment.
- 1186.5. — Errors on part of accused or accused's attorney.
- 1186.6. — Confession of error.
- 1186.7. — Practice as to granting and on reversal.
- 1187. — Rendering final judgment.
- 1188. — Directing judgment in lower court.
- 1189. — Ordering new trial.
- 1190. — Effect.
- 1191. Rendition, form, and entry of judgment.
- 1192. Mandate and proceedings in lower court.

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- 1193. Jurisdiction and proceedings of appellate court after remand.

**(V) LIABILITIES ON BONDS AND UNDERTAKINGS.**

- 1194. Nature and grounds in general.
- 1195. Discharge of sureties.
- 1196. Accrual or release of liability by breach or fulfillment of conditions.
- 1197. Extent of liability.
- 1198. Summary remedies.
- 1199. Actions.

**XXV. HABITUAL AND SECOND OFFENDERS (OBSOLETE, SEE SENTENCING AND PUNISHMENT VI).****XXVI. INCIDENTS OF CONVICTION.**

*See also SENTENCING AND PUNISHMENT.*

- 1219.5. In general.
- 1220. Civil liabilities to persons injured; reparation.
 

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- 1222. Prevention and investigation of crime.
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- 1224. — Intervention of public officers.
  - (1). In general.
  - (2). Entry for investigation.
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- 1225. — Intervention of private persons.

**XXVIII. CRIMINAL RECORDS.**

- 1226. In general.
  - (1). In general; right to maintain.
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  - (3). Expungement or correction; effect of acquittal or dismissal.
    - (3.1). — In general.
  - (4). — Arrest records.
  - (5). — Identification records.

**110. CRIMINAL LAW****XXIX. SENTENCING GUIDELINES  
(OBSOLETE, SEE SENTENCING  
AND PUNISHMENT IV).****XXX. POST-CONVICTION RELIEF.***Writs of habeas corpus, see HABEAS CORPUS.***(A) IN GENERAL.**

- 1400. In general.
- 1401. Constitutional, statutory, and regulatory provisions.
- 1402. — In general.
- 1403. — Purpose.
- 1404. — Validity.
- 1405. — Retroactive application.
- 1406. Nature of remedy.
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- 1408. — Equitable nature.
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- 1410. — Purpose.
- 1411. Error coram nobis.
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- 1414. Proceedings subject to review.
- 1415. — In general.
- 1416. — Criminal nature.
- 1417. — Finality of proceedings.
- 1418. — Necessity of conviction, judgment, or sentence.
- 1419. — Prison disciplinary proceedings.
- 1425. Discretion.
- 1426. Existence of other remedies.
  - (1). In general.
  - (2). Habeas corpus.
  - (3). Appeal.
- 1427. Matters which either were or could have been adjudicated previously, in general.
- 1428. Presentation of issue in prior proceedings.
- 1429. — In general.
  - (1). In general.
  - (2). Post-conviction proceeding not a substitute for appeal.
- 1430. — Waiver.
- 1431. — Deliberate bypass; matters known to movant or petitioner.
- 1432. Effect of escape.
- 1433. Matters already adjudicated.
  - (1). In general.

**XXX. POST-CONVICTION RELIEF.(Cont'd)**

- (2). Affirmance of conviction.
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  - 1436. — In general.
  - 1437. — Fundamental or constitutional error; innocence.
  - 1438. — Cause and prejudice in general.
  - 1439. — Cause.
  - 1440. — Counsel.
    - (1). In general.
    - (2). Preferability of raising effectiveness issue on post-conviction motion.
    - (3). Same or different counsel in previous proceedings.
    - (4). Ineffectiveness as reason for failure to raise claim previously.
  - 1441. — Prejudice.
  - 1442. Mootness; legal consequences.
  - 1443. — In general.
  - 1444. — Sentence enhancement or habitual offender treatment.
  - 1445. — Confinement on other charges.
  - 1446. Custody of movant or petitioner.
  - 1447. — In general.
  - 1448. — Future imprisonment on charge at issue.
  - 1449. — Parole and conditional release.
- (B) GROUNDS FOR RELIEF.**
- 1450. In general.
  - 1451. Constitutional or fundamental error.
  - 1452. Denial of fair trial.
  - 1453. Multiple or aggregate grounds cumulatively warranting relief.
  - 1454. Prejudice.
  - 1455. Factual questions or errors.
  - 1456. Change in the law.
  - 1457. Criminal liability; innocence.
  - 1458. Invalidity of statute or ordinance.
  - 1459. Defenses.
  - 1460. — In general.
  - 1461. — Accident.
  - 1462. — Double jeopardy.
  - 1463. — Duress, compulsion, or necessity.
  - 1464. — Entrapment.

**110. CRIMINAL LAW****XXX. POST-CONVICTION RELIEF.(Cont'd)**

- 1465. — Insanity or other mental condition at time of offense.
- 1466. — Intoxication.
- 1467. — Limitations.
- 1468. — Outrageous government conduct.
- 1469. Fraud or deceit.
- 1470. — In general.
- 1471. — Fraud or deceit by defendant.
- 1472. Error in other proceeding.
- 1473. Juveniles and youthful offenders.
- 1474. Preliminary proceedings in general.
- 1475. Arrest.
- 1476. Searches and seizures.
- 1477. Grand jury.
- 1478. Indictment and information.
- 1479. Arraignment and plea.
- 1480. — In general.
- 1481. — Voluntariness.
- 1482. — Advice.
- 1483. — Plea bargain.
- 1484. Preliminary hearing.
- 1485. Bail.
- 1486. Jury.
- 1487. — In general.
- 1488. — Right to jury trial.
- 1489. — Drawing and impaneling.
- 1490. — Examination of jurors.
- 1491. — Qualification; bias.
- 1492. — Peremptory challenges.
- 1493. Jurisdiction.
- 1494. Venue.
- 1495. — In general.
- 1496. — Change of venue.
- 1497. Mental examination.
- 1498. Competency to stand trial.
- 1499. Continuance.
- 1500. Time for trial.
- 1501. Joinder and severance.
- 1502. — In general.
- 1503. — Of defendants.
- 1504. — Of counts and charges.
- 1505. Discovery and disclosure.
- 1506. Witness lists.
- 1507. Notice of defenses.
- 1508. Conduct of trial in general.
- 1509. Public trial.
- 1510. Custody or restraint of accused.
- 1511. Counsel.

**XXX. POST-CONVICTION RELIEF.(Cont'd)**

- 1512. — In general.
- 1513. — Stage of proceedings.
- 1514. — Access to counsel.
- 1515. — Choice of counsel.
- 1516. — Waiver and pro se representation.
- 1517. — Conflict of interest.
- 1518. — Number of counsel.
- 1519. — Effectiveness of counsel.
  - (1). In general.
  - (2). Representation rendering proceeding a farce or sham.
  - (3). Prejudicial effect.
  - (4). Deficient representation and prejudice.
  - (5). Failure to raise defenses.
  - (6). Pretrial investigation and preparation.
  - (7). Preliminary proceedings in general.
  - (8). Plea.
  - (9). Jury selection.
  - (10). Evidence and witnesses.
  - (11). Argument and conduct of prosecutor.
  - (12). Instructions.
  - (13). Sentencing.
  - (14). Motion for new trial.
  - (15). Appeal.
  - (16). Other proceedings following conviction.
  - (17). Other particular miscellaneous issues.
  - (18). Counsel of defendant's choice or defendant pro se.
- 1520. Stenographers; necessity of written record.
- 1521. Translators and interpreters.
- 1522. Presence of accused.
- 1523. Conduct and remarks of trial judge.
- 1524. Bias of judge; recusal.
- 1525. Evidence.
- 1526. — In general.
- 1527. — Presumptions and burden of proof.
- 1528. — Admissibility in general.
- 1529. — Lineups and identification.
- 1530. — Statements, confessions, and admissions.

**110. CRIMINAL LAW****XXX. POST-CONVICTION RELIEF.(Cont'd)**

- (1). In general.
  - (2). Voluntariness.
  - (3). Warnings.
  - (4). Waiver.
  - 1531. — Illegally-obtained evidence.
  - 1532. — Opinion and expert testimony.
  - 1533. — Other offenses.
  - 1534. — Weight and sufficiency.
  - 1535. — Exclusion of evidence.
  - 1536. Newly discovered evidence.
  - 1537. Perjured testimony.
  - 1538. Recantation.
  - 1539. Confrontation of witnesses.
  - 1540. Witnesses.
  - 1541. — In general.
  - 1542. — Competency.
  - 1543. — Examination.
  - 1544. — Cross-examination.
  - 1545. — Impeachment.
  - 1550. Conduct and argument of prosecutor.
  - 1551. Instructions.
  - 1552. — In general.
  - 1553. — Failure or refusal to give instructions.
  - 1554. Issues relating to jury trial.
  - 1555. Verdict and findings.
  - 1556. Sentence and punishment.
  - 1556.5. Right to jury determination of sentencing issues.
  - 1557. Matters arising after sentencing or conviction.
- Proceedings subject to review, see also ¶1415.*
- (1). In general.
  - (2). Execution of sentence.
  - (3). Conditions of confinement.
  - (4). Probation, parole, or pardon.
- 1558. Judgment.
  - 1559. Appeal.
  - 1560. Costs.

**(C) PROCEEDINGS.****1. IN GENERAL.**

- 1570. In general.
- 1571. Estoppel.
- 1572. Waiver.
- 1573. Parties.
- 1574. Petition or motion.
- 1575. — In general.

**XXX. POST-CONVICTION RELIEF.(Cont'd)**

- 1576. — Characterization.
- 1577. — Construction.
- 1578. — Pro se petitions or motions.
- 1579. — Formal requirements.
- 1580. — Particular issues.
- (1). In general.
- (2). Indictment and information.
- (3). Plea.
- (4). Pretrial proceedings.
- (5). Mental capacity.
- (6). Admissibility of evidence.
- (7). Confessions, statements, and admissions.
- (8). Conduct of trial.
- (9). Argument and conduct of prosecutor.
- (10). Right to counsel.
- (11). Newly discovered evidence.
- (12). Sentencing.
- 1581. Verification, exhibits and attachments.
- 1582. Answer or return.
- 1583. Issues, proof and variance.
- 1584. Rule to show cause.
- 1585. Process or notice.
- 1586. Time for proceedings.
- 1587. Jurisdiction.
- 1588. Venue.
- 1589. Leave to apply.
- 1590. Discovery and disclosure.
- 1591. Dismissal.
- 1592. — In general.
- 1593. — With or without prejudice.
- 1594. Presence of accused.
- 1600. Counsel.
- 1601. — In general.
- 1602. — Right to counsel.
- 1603. — Self-representation.
- 1604. — Access to counsel.
- 1605. — Presence of counsel.
- 1606. — Waiver of counsel.
- 1607. — Conflict of interest.

**2. AFFIDAVITS AND EVIDENCE.**

- 1610. In general.
- 1611. Discretion.
- 1612. Presumptions.
- (1). In general.
- (2). Counsel.

**110. CRIMINAL LAW****XXX. POST-CONVICTION RELIEF.(Cont'd)**

- 1613. Burden of proof.
- 1614. Admissibility.
- 1615. Degree of proof.
- 1616. Sufficiency.
- 1617. — In general.
- 1618. — Particular issues.
  - (1). In general.
  - (2). Indictment and information.
  - (3). Plea.
  - (4). Pretrial proceedings.
  - (5). Mental capacity.
  - (6). Admissibility of evidence.
  - (7). Confessions, statements, and admissions.
  - (8). Conduct of trial.
  - (9). Argument and conduct of counsel.
  - (10). Defense counsel.
  - (11). Newly discovered evidence.
  - (12). Perjured testimony and recantation.
  - (13). Sentencing.
  - (14). Appeal.
  - (15). Exhaustion and procedural default.

**3. HEARING AND DETERMINATION.**

- 1650. In general.
- 1651. Necessity for hearing.
- 1652. — In general.
- 1653. — Questions of law or fact.
- 1654. — Discretion.
- 1655. — Particular issues.
  - (1). In general.
  - (2). Indictment and information.
  - (3). Plea.
  - (4). Pretrial proceedings.
  - (5). Mental capacity.
  - (6). Counsel.
  - (7). Perjured testimony and recantation.
  - (8). Conduct of trial.
  - (9). Exhaustion and procedural default.
- 1656. Scope of hearing.
- 1657. Time for hearing.
- 1658. Public hearing.
- 1659. Presence of accused.
- 1660. Findings.

**XXX. POST-CONVICTION RELIEF.(Cont'd)**

- 1661. Decision or order.
- 1662. Disposition.
- 1663. — In general.
- 1664. — Discharge.
- 1665. — New trial.
- 1666. Effect of determination.
- 1667. — In general.
- 1668. — Successive post-conviction proceedings.
  - (1). In general.
  - (2). Abuse.
  - (3). Particular issues and cases.
  - (4). Excuses for failure to raise issue in previous post-conviction proceeding.
  - (5). — In general.
  - (6). — Particular issues and cases.
  - (7). — Counsel.
  - (8). — Newly discovered evidence.
  - (9). Proceedings.

**XXXI. COUNSEL.****(A) COUNSEL FOR PROSECUTION.**

- 1690. In general.
- 1691. Disqualification of prosecutor.
- 1692. — In general.
- 1693. — Disqualification of chief prosecutor or of office itself.
- 1694. — Disqualification of assigned prosecutor.
- 1695. — Disqualification of one prosecutor affecting or imputed to the rest of the office.
- 1696. — Procedure.
- 1697. Extent of participation in proceeding.
- 1698. Appointment of special prosecutor.
- 1699. — In general.
- 1700. — Grounds for employment or appointment of special prosecutor.
- 1701. — Authority of special prosecutor.
- 1702. — Eligibility and qualifications of special prosecutor.
- 1703. — Procedure.
- 1704. Private counsel.

**(B) RIGHT OF DEFENDANT TO COUNSEL.****1. IN GENERAL.**

- 1710. In general.



**110. CRIMINAL LAW****XXXI. COUNSEL.**(Cont'd)

- 1711. Offenses, tribunals, and proceedings involving right to counsel.
- 1712. — In general.
- 1713. — Criminal nature of proceeding, in general.
- 1714. — Nature or degree of offense.
- 1715. — Penalty, potential or actual.

**2. STAGE OF PROCEEDINGS AS AFFECTING RIGHT.**

- 1717. In general.
- 1718. Critical stages.
- 1719. Adversary or judicial proceedings.
- 1720. Particular proceedings or occasions in general.
- 1721. Investigative proceedings generally; witness interviews; search or surveillance; eavesdropping and use of informers.
- 1722. Inquiry, interrogation, or conversation; request for attorney while in custody.
- 1723. Identification.
- 1724. — In general.
- 1725. — Photographic identification.
- 1726. — Lineup or showup.
- 1727. Hair, blood, tissue samples; testing.
- 1728. Arrest.
- 1729. Grand jury; indictment, information, or complaint.
- 1730. Preliminary examination; arraignment; appearance; bail.
- 1731. Guilty pleas; plea negotiations, plea hearings, motion to withdraw.
- 1732. Pretrial proceedings in general.
- 1733. — In general.
- 1734. — Depositions and discovery.
- 1735. — Evidentiary hearings.
- 1736. Competency hearing; mental examination.
- 1737. Events during trial.
- 1738. — In general.
- 1739. — Instructions; communications with jury.
- 1740. New trial phase.
- 1741. Appeal or certiorari; further appeal; proceedings on remand.
- 1742. Collateral attacks or ancillary proceedings in general.

**3. WAIVER OF RIGHT TO COUNSEL.**

- 1750. In general; right to appear pro se.
- 1751. Capacity and requisites in general.
- 1752. Validity and sufficiency, particular cases.
- 1753. Guilty plea.
- 1754. Delay or misuse of waiver or right of self-representation.
- 1755. Effect of waiver or appearing pro se.
- 1756. Waiver in proceedings after trial.
- 1757. Forfeiture or waiver of right by delay or misconduct.

**4. STATUS AND COMPETENCE OF ACCUSED AFFECTING RIGHTS AND WAIVER.**

- 1760. In general.
- 1761. Health in general.
- 1762. Mental competence in general.
- 1763. Chemical dependency.
- 1764. Age.
- 1765. Education and experience.
- 1766. Indigence.

**5. PROCEDURE AND AFFIRMATIVE DUTIES BY COURT IN PROTECTION OF RIGHT TO COUNSEL AND RIGHT TO SELF-REPRESENTATION.**

- 1770. In general.
- 1771. Presumptions as to waiver, burden of proof.
- 1772. Duty of inquiry, warning, and advice.
- 1773. — In general.
- 1774. — Particular cases.
  - (1). In general.
  - (2). Waiver of right to counsel.
  - (3). Indigence.
- 1775. Hearing; necessity and conduct.
- 1776. Decisions, findings, and order.

**6. CONFLICT OF INTEREST.**

- 1780. In general.
- 1781. Prejudice and harm in general.
- 1782. Particular cases or situations.
- 1783. — In general.
- 1784. — Prejudice and harm in particular cases or situations.
- 1785. — Disagreement as to strategy.
- 1786. — Partners and associates; public defenders.
- 1787. — Previous or concurrent representation of witness or other party.

**110. CRIMINAL LAW****XXXI. COUNSEL.**(Cont'd)

- 1788. — Counsel formerly a prosecutor; family relationships with prosecutors.
- 1789. Presumptions and burden of proof.
- 1790. Advice, inquiry, and determination.
- 1791. Objections and waiver.

**7. JOINT REPRESENTATION OF CODEFENDANTS.**

- 1800. In general.
- 1801. Particular cases.
- 1802. Prejudice and harm.
- 1803. Partners and associates; public defenders.
- 1804. Presumptions and burden of proof.
- 1805. Advice, inquiry, and determination.
- 1806. Objections and waiver.

**8. NUMBER OF COUNSEL.**

- 1810. In general.
- 1811. On appeal.

**9. CHOICE OF COUNSEL.**

- 1820. In general.
- 1821. Forcing counsel on accused.
- 1822. Choice of appointed counsel.
- 1823. Change in general.
- 1824. Discharge by accused.
- 1825. — In general.
- 1826. — Discretion of court.
- 1827. — Right to discharge or substitute.
- 1828. — Particular cases.
  - (1). In general.
  - (2). Discharge for self-representation.
- 1829. — Time for motion.
- 1830. — Procedure.
- 1831. Withdrawal by counsel.
- 1832. — In general.
- 1833. — Anders withdrawal on appeal.
  - (1). In general.
  - (2). Particular cases, withdrawal allowed.
  - (3). Withdrawal disallowed; arguable merit.
- 1834. Appearing both pro se and by counsel; hybrid representation.
- 1835. — In general.
- 1836. — Particular cases.
- 1837. — Requiring advisory counsel.

**XXXI. COUNSEL.**(Cont'd)

- 1838. — Defendant filing pro se motions while represented by counsel.
- 1839. — Extent of participation by counsel.

**10. PUBLIC DEFENDERS.**

- 1840. In general.

**11. DEPRIVATION OR ALLOWANCE OF COUNSEL.**

- 1850. In general.
- 1851. Prejudice and presumptions.
- 1852. Particular cases in general.
- 1853. Interference in attorney-client relationship.
- 1854. Presence of counsel.
- 1855. Denial of continuance; time for preparation.
- 1856. Notice of right to counsel.
- 1857. Consultation with counsel; privacy.
- 1858. Assisting and compensating counsel.
- 1859. Experts and investigators.
- 1860. Effect of representation or deprivation of rights.
- 1861. — In general.
- 1862. — Remedies.

**(C) ADEQUACY OF REPRESENTATION.****1. IN GENERAL.**

- 1870. In general.
- 1871. Presumptions and burden of proof in general.
- 1872. General qualifications of counsel.
- 1873. — In general.
- 1874. — License.
- 1875. — Pending or previous disciplinary proceedings, suspension, or disbarment.
- 1876. — Experience, training, education.
- 1877. — Health issues and disclosure thereof.
- 1878. — Other particular issues.
- 1879. Standard of effective assistance in general.
- 1880. — In general.
- 1881. — Deficient representation and prejudice in general.
- 1882. — Deficient representation in general.

**110. CRIMINAL LAW****XXXI. COUNSEL.**(Cont'd)

- 1883. — Prejudice in general.
- 1884. — Strategy and tactics in general.
- 1885. — Exceptions to two-pronged standard.
- 1886. — Death penalty cases.
- 1887. Duty of court to inquire as to effectiveness in general.
- 1888. Determination.

**2. PARTICULAR CASES AND ISSUES.**

- 1890. In general.
- 1891. Preparation for trial.
- 1892. Preparation for death penalty matters.
- 1893. Pretrial proceedings in general.
- 1894. Grand jury.
- 1895. Indictment and information.
- 1896. Judges; recusal.
- 1897. Bail.
- 1898. Severance of charges.
- 1899. Severance of defendants.
- 1900. Competence to stand trial; sanity hearing.
- 1901. Jury selection and composition.
- 1902. Venue.
- 1903. Continuance.
- 1904. Speedy trial.
- 1905. Discovery.
- 1906. Witness lists.
- 1907. Stipulations.
- 1908. Raising of particular defense or contention.
- 1909. — In general.
- 1910. — Nature and elements of crime.
- 1911. — Limitations.
- 1912. — Capacity to commit crime; insanity or intoxication.
- 1913. — Alibi.
- 1914. — Selective prosecution.
- 1915. — Vindictive prosecution.
- 1916. — Entrapment.
- 1917. — Self-defense; defense of another.
- 1918. — Former jeopardy.
- 1919. Arraignment.
- 1920. Plea.
- 1921. Introduction of and objections to evidence at trial.
- 1922. — In general.

**XXXI. COUNSEL.**(Cont'd)

- 1923. — Investigating, locating, and interviewing witnesses or others.
- 1924. — Presentation of witnesses.
- 1925. — Examination of witnesses.
- 1926. — Suppression of evidence.
- 1927. — Other offenses and prior misconduct.
- 1928. — Character of accused.
- 1929. — Hearsay.
- 1930. — Identification.
- 1931. — Experts; opinion testimony.
- 1932. — Declarations, confessions, and admissions.
- 1933. — Documentary evidence.
- 1934. — Demonstrative evidence.
- 1935. — Impeachment or contradiction of witnesses.
- 1936. — Defendant as witness.
- 1937. Trial in general; reception of evidence.
- 1938. Objections to prosecution evidence at trial in general.
- 1939. Confrontation.
- 1940. Sequestration of witnesses.
- 1941. Argument and conduct of defense counsel.
- 1942. — In general.
- 1943. — Admissions or concessions.
- 1944. Objections to argument or conduct of counsel.
- 1945. Instructions.
- 1946. — In general.
- 1947. — Offering instructions.
- 1948. — Objecting to instructions.
- 1949. — Limiting and curative instructions.
- 1950. — Lesser included offense instructions.
- 1951. Deliberations and verdict.
- 1952. Sentencing in general.
- 1953. — In general.
- 1954. — Adequacy of investigation of sentencing issues.
- 1955. — Presentation of evidence regarding sentencing.
- 1956. — Arguments and comments.
- 1957. — Other particular issues.
- 1958. Death penalty.
- 1959. — In general.

**110. CRIMINAL LAW****XXXI. COUNSEL.**(Cont'd)

- 1960. — Adequacy of investigation of mitigating circumstances.
- 1961. — Presentation of evidence in sentencing phase.
- 1962. — Argument and comments.
- 1963. — Other particular issues in death penalty cases.
- 1964. Proceedings following trial in general.
- 1965. New trial motion.
- 1966. Appeal.
- 1967. — In general.
- 1968. — Preservation of error for appeal.
- 1969. — Raising issues on appeal; briefs.
- 1970. — Procedure in general; timeliness.
- 1971. Post-conviction relief and error coram nobis.
- 1972. Habeas corpus.
- 1973. Multiple particular grounds.
- 1974. Indigent's or incompetent's counsel and public defenders.
- 1975. Counsel of defendant's choice or defendant pro se.

**(D) DUTIES AND OBLIGATIONS OF PROSECUTING ATTORNEYS.****1. IN GENERAL.**

- 1980. In general.
- 1981. Duty to allow fair trial in general.
- 1982. Prejudice resulting from improper conduct; unfairness or miscarriage of justice.
- 1983. Assertion of theory inconsistent with theory previously asserted.
- 1984. Ex parte communications by prosecutor.
- 1985. Miscellaneous particular issues.
- 1986. Sanctions for breach of prosecutorial duties.

**2. DISCLOSURE OF INFORMATION.**

- 1990. In general.
- 1991. Constitutional obligations regarding disclosure.
- 1992. Materiality and probable effect of information in general.
- 1993. Particular types of information subject to disclosure.
- 1994. — In general.

**XXXI. COUNSEL.**(Cont'd)

- 1995. — Diligence on part of accused; availability of information.
- 1996. — Grand jury proceedings.
- 1997. — Evidence incriminating others.
- 1998. — Statements of witnesses or prospective witnesses.
- 1999. — Impeaching evidence.
- 2000. — Test results; demonstrative and documentary evidence.
- 2001. — Other particular issues.
- 2002. Information within knowledge of prosecution.
- 2003. — In general.
- 2004. — Duty to locate information.
- 2005. — Responsibility of and for police and other agencies.
- 2006. Request for disclosure; procedure.
- 2007. Time and manner of required disclosure.
- 2008. Sanctions for failure to disclose.

**3. DESTRUCTION OR LOSS OF INFORMATION.**

- 2010. In general.
- 2011. Excuse or justification for destruction or loss.
- 2012. Sanctions for destruction or loss.

**4. NONPRODUCTION OF WITNESS OR RENDERING WITNESS UNAVAILABLE.**

- 2020. In general.

**5. PRESENTATION OF EVIDENCE.**

- 2030. In general.
- 2031. Use of improper evidence.
- 2032. Use of false or perjured testimony.
- 2033. — In general.
- 2034. — What constitutes perjured testimony.
- 2035. — Obligation to caution witness about possible perjury.
- 2036. — Duty to correct false or perjured testimony.
- 2037. — Effect of perjured testimony; remedy.
- 2038. Calling witnesses; compelling assertion of privilege.
- 2039. Examination of witnesses other than accused.
- 2040. — In general.

**110. CRIMINAL LAW****XXXI. COUNSEL.**(Cont'd)

- 2041. — Cross-examination.
- 2042. — Impeachment.
- 2043. Examination of accused.
- 2044. — In general.
- 2045. — Cross-examination.
- 2046. — Impeachment.
- 2047. Introducing evidence of other misconduct by accused.
- 2048. Use of exhibits and demonstrative evidence.
- 2049. Repetition; violations of prior ruling.

**(E) DUTIES AND OBLIGATIONS  
OF DEFENSE ATTORNEYS.**

- 2050. In general.
- 2051. Presentation of evidence and examination of witnesses.

**(F) ARGUMENTS AND STATEMENTS BY COUNSEL.**

- 2060. In general.
- 2061. Control of argument by court.
- 2062. — In general.
- 2063. — Discretion of court in controlling argument.
- 2064. — Form and manner of argument; number of counsel.
- 2065. — Reargument or reopening of argument.
- 2066. — Other particular issues.
- 2067. Scope and effect of opening statement.
- 2068. — In general.
- 2069. — For prosecution.
- 2070. — For defense.
- 2071. Scope of and effect of summing up.
- 2072. — In general.
- 2073. — For prosecution.
- 2074. — For defense.
- 2075. Limiting scope or time of argument.
- 2076. Statements as to facts and arguments.
- 2077. — In general.
- 2078. — Stating or reading proceedings.
- 2079. — Exhibits and illustrations.
- 2080. — Authorities on subject involved.
- 2081. — Rhetorical questions by counsel during argument.
- 2082. — Religious appeals.
- 2083. Demonstrative conduct by counsel.
- 2084. Statements regarding applicable law.
- 2085. — In general.

**XXXI. COUNSEL.**(Cont'd)

- 2086. — In particular prosecutions.
- 2087. Matters not within issues.
- 2088. Matters not sustained by evidence.
- 2089. — In general.
- 2090. — Theory of case.
- 2091. — Personal knowledge, opinion, or belief of counsel.
- 2092. — Evidence excluded.
- 2093. Comments on evidence or witnesses.
- 2094. — In general.
- 2095. — Statement of evidence.
- 2096. — Comments regarding statements or declarations by accused.
- 2097. — Evidence admitted without objection.
- 2098. — Credibility and character of witnesses; bolstering.
  - (1). In general.
  - (2). Credibility of accused.
  - (3). Credibility of victim.
  - (4). Credibility of expert witness.
  - (5). Credibility of other witnesses.
- 2099. Comments shifting or misstating burden of proof.
- 2100. — In general.
- 2101. — In particular prosecutions.
- 2102. Inferences from and effect of evidence.
- 2103. — In general.
- 2104. — Abortion and birth control.
- 2105. — Arson.
- 2106. — Assault and battery.
- 2107. — Burglary and trespass.
- 2108. — Civil rights offenses.
- 2109. — Conspiracy, racketeering, and money laundering.
- 2110. — Counterfeiting and forgery.
- 2111. — Controlled substances.
- 2112. — Disorderly conduct and breach of the peace.
- 2113. — Escape.
- 2114. — Extortion, threats, stalking, and harassment.
- 2115. — False pretenses and fraud.
- 2116. — Gambling and gaming.
- 2117. — Homicide and assault with intent to kill.
- 2118. — Infants, minors, and children, of-fenses specific to.

**110. CRIMINAL LAW****XXXI. COUNSEL.(Cont'd)**

- 2119. — Kidnapping and false imprisonment.
- 2120. — Larceny, embezzlement, and receiving stolen property.
- 2121. — Liquor offenses.
- 2122. — Motor vehicle offenses.
- 2123. — Obscenity and lewdness.
- 2124. — Obstructing justice, bribery, and perjury.
- 2125. — Robbery.
- 2126. — Sex offenses, incest, and prostitution.
- 2127. — Tax and internal revenue offenses.
- 2128. — Weapons and explosives.
- 2129. Comments on accused's silence or failure to testify.
- 2130. — In general.
- 2131. — Comments on silence of accused prior to trial.
  - (1). In general.
  - (2). Silence prior to arrest.
  - (3). Silence during or subsequent to arrest.
- 2132. — Comments on failure of accused to testify.
  - (1). In general.
  - (2). In particular prosecutions.
  - (3). Indirect references.
  - (4). Reference to pretrial silence as comment on failure to testify.
  - (5). Reference to evidence as contradicted as comment on failure to testify.
  - (6). Reference to failure to produce witness or evidence as comment on failure to testify.
- 2133. Comment on assertion of privilege by witness other than accused.
- 2134. Comments on failure to present evidence or witnesses.
- 2135. — In general.
- 2136. — Comments by prosecution on failure of accused to present evidence.
- 2137. — Comments by defense on failure of prosecution to present evidence.
- 2138. Evidence of character of accused.
- 2139. Expression of opinion as to guilt of accused.

**XXXI. COUNSEL.(Cont'd)**

- 2140. Comments on character or conduct.
- 2141. — In general.
- 2142. — Character, conduct, or appearance of prosecutor.
- 2143. — Character, conduct, or appearance of accused.
- 2144. — Comments on other misconduct by accused.
- 2145. Appeals to sympathy or prejudice.
- 2146. — In general.
- 2147. — Abusive language.
- 2148. — Comments regarding character of victim.
- 2149. — Comments on character of offense charged.
- 2150. — Comments on frequency of offenses, and appeals for law enforcement.
- 2151. — Putting jurors in place of victim; "golden rule" arguments.
- 2152. — Attacks on accused.
- 2153. — Attacks on opposing counsel.
- 2154. — Future dangerousness of accused.
- 2155. — Appeals to fears of jury.
- 2156. — Appeals to racial or other prejudice.
- 2157. Comments to jurors as to duties and obligations.
- 2158. Guilt phase arguments as to potential sentence or punishment.
- 2159. — In general.
- 2160. — In particular prosecutions.
- 2161. Sentencing phase arguments.
- 2162. — In general.
- 2163. — In particular prosecutions.
- 2164. Rebuttal argument; responsive statements and remarks.
- 2165. — In general.
- 2166. — Opening statement.
- 2167. — Summing up.
- 2168. — Stating or reading proceedings.
- 2169. — Exhibits and illustrations.
- 2170. — Authorities on subject involved.
- 2171. — Statements regarding applicable law.
- 2172. — Matters not within issues.
- 2173. — Matters not sustained by evidence.

**110. CRIMINAL LAW****XXXI. COUNSEL.**(Cont'd)

- 2174. — Comments on evidence or witnesses.
- 2175. — Inferences from and effect of evidence.
- 2176. — Comments on accused's silence or failure to testify.
- 2177. — Comments on failure to present evidence.
- 2178. — Expression of opinion as to guilt of accused.
- 2179. — Comments on character or conduct.
- 2180. — Appeals to sympathy or prejudice.
- 2181. — Instructions to jurors as to duties and obligations.
- 2182. — Comments regarding potential punishment.
- 2183. Evidence to rebut statements.
- 2184. Objections, motions, and waiver.
- 2185. — In general.
- 2186. — Necessity.
- 2187. — Time of making.
- 2188. — Sufficiency.
- 2189. — Necessity of request for correction.
- 2190. Withdrawal or correction.
- 2191. Action of court in response to comments or conduct.
- 2192. — In general.
- 2193. — Opening statement.
- 2194. — Presentation of evidence.
- 2195. — Summing up.
- 2196. — Stating or reading proceedings.
- 2197. — Statements regarding applicable law.
- 2198. — Matters not within issues.
- 2199. — Matters not sustained by evidence.
- 2200. — Comments on evidence or witnesses.
- 2201. — Inferences from and effect of evidence.
- 2202. — Comments on accused's silence or failure to testify.
- 2203. — Comments on failure of accused to present evidence.
- 2204. — Expressions as to guilt of accused.
- 2205. — Comments on character or conduct.

**XXXI. COUNSEL.**(Cont'd)

- 2206. — Comments on other misconduct by accused.
- 2207. — Appeals to sympathy or prejudice.
- 2208. — Responsive statements and remarks.
- 2209. — Guilt phase arguments as to potential sentence or punishment.
- 2210. — Sentencing phase arguments.

**111. CROPS****SUBJECTS INCLUDED**

Annual products of the soil while unsevered therefrom, growing spontaneously or by cultivation, immature or ripe

Nature and incidents of rights of property therein in general

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Agriculture, promotion in general and liens, see AGRICULTURE

Attachment, liability of crops to, see CREDITORS' REMEDIES

Contracts and conveyances relating to crops, see CHATTEL MORTGAGES, SALES and other specific topics

Execution, liability of crops to, see CREDITORS' REMEDIES

Particular estates in land, rights and liabilities incident to, see LANDLORD AND TENANT, PROPERTY III(C), and other specific topics

Shares, renting on, see LANDLORD AND TENANT

- 1. Nature of property.
- 2. Ownership in general.
- 3. Contracts.
- 4. Effect of sale or conveyance of land.
- 5. — In general.
- 6. — Reservation of growing crops.
- 7. Effect of severance.
- 8. Offenses.

**113. CUSTOMS AND USAGES****111H. CURRENCY REGULATION****SUBJECTS INCLUDED**

Power of Congress to establish and regulate money and legal currency

Gold, silver, notes, certificates, and other items or securities intended to circulate as money or currency

Particular activities and their regulation, by the laws of the federal government or of the states, in connection with money and currency, including—

- Bulk cash smuggling
- Currency reporting requirements
- Illegally structuring currency transactions to evade reporting requirements
- Monetary transactions in criminally derived property
- Money laundering

Criminal and civil liabilities and proceedings under such laws

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Conspiracy, see CONSPIRACY

Counterfeiting, see COUNTERFEITING

Federal Reserve System, see FINANCE, BANKING, AND CREDIT VI

Fiscal powers of Congress, see UNITED STATES I(G)

Power of Congress—

- To fix the standard of weights and measures, see WEIGHTS AND MEASURES
- To spend, borrow, and appropriate money, see UNITED STATES I(G)

Racketeering, see RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Unlicensed money transmitting businesses, see FINANCE, BANKING, AND CREDIT ¶61, 1725

What constitutes legal tender, see PAYMENT ¶10–12

1. In general.
2. Gold and silver; bullion.
3. Federal Reserve notes.
4. Money laundering.
5. Monetary transactions in unlawfully derived property.

6. Records of and reports on monetary transactions.
7. — In general.
8. — Duties of financial institutions.
9. Criminal proceedings.
10. — In general.
11. — Indictment or information.
12. — Evidence in general.
13. — Weight and sufficiency of evidence.
  - (1). In general.
  - (2). Gold and silver; bullion.
  - (3). Money laundering.
  - (4). Monetary transactions in unlawfully derived property.
  - (5). Records of and reports on monetary transactions.
14. — Instructions.
15. — Questions of law or fact.
16. — Sentence and punishment.
17. Civil liability.

**113. CUSTOMS AND USAGES****SUBJECTS INCLUDED**

Established methods of dealing in particular occupations or trades, or in transactions of a particular kind, or in particular localities

Their operation and effect as to contracts

Pleading such customs and usages, and evidence relating thereto

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Crime, custom affecting, see CRIMINAL LAW and specific criminal topics

Insurance, custom affecting, see INSURANCE

Law, general or local customs having force of, see COMMON LAW and specific topics

Negligence, course of usage or practice affecting, see NEGLIGENCE, AUTOMOBILES and other specific topics

Persons in particular relationships or occupations, customs affecting, see FINANCE, BANKING, AND CREDIT, LABOR AND EMPLOYMENT, and other specific topics



**113. CUSTOMS AND USAGES**

Torts, course of dealing or practice affecting,  
see TRESPASS and other specific topics

1. Nature and grounds in general.
2. Requisites and validity.
3. — In general.
4. — Duration and establishment.
5. — Generality.
6. — Certainty and uniformity.
7. — Reasonableness.
8. — Legality.
9. Application and operation.
- 9.1. — In general.
10. — Scope and effect in general.
11. — Creation and existence of contract.
12. — Knowledge of parties.
  - (1). In general.
  - (2). Presumption of knowledge.
13. — Reference to or incorporation of custom in making contract.
14. — Exclusion by terms of contract.
15. — Explanation of contract.
  - (1). In general.
  - (2). Construction of particular words and phrases.
16. — Adding to terms of contract.
17. — Varying terms of contract.
18. Pleading.
19. Evidence as to existence of custom.
  - (.5). In general.
  - (1). Burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.
20. Evidence as to knowledge of custom.
21. Questions for jury.
22. Instructions.

**114. CUSTOMS DUTIES****SUBJECTS INCLUDED**

Taxes on imports or exports

Power to impose such duties, and constitutional and statutory provisions relating thereto

Property subject to duty, classification thereof under provisions of customs laws, and rate and amount of duties

Entry, storage and appraisal of goods, liens for collection and payment of duties, drawbacks, and rights and remedies of importers or owners of goods

Import regulations

Forfeitures, penalties and other punishments for violations of customs laws

Trade adjustment assistance

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Excise duties and other internal taxes, see INTERNAL REVENUE

Narcotic drugs, importation, see CONTROLLED SUBSTANCES

I. VALIDITY, CONSTRUCTION, AND OPERATION OF CUSTOMS LAWS IN GENERAL, ¶1–22.5.

II. GOODS SUBJECT TO DUTY, RATE, AND AMOUNT, ¶23–52.

III. COLLECTION DISTRICTS AND OFFICERS, ¶53–60.5.

IV. ENTRY OF GOODS, ¶61–70.

V. APPRAISAL, ¶71–80.

VI. LIQUIDATION AND RELIQUIDATION, ¶81.

VII. PROTESTS AND REVIEW, ¶82–85.

VIII. BONDS AND WAREHOUSES, ¶86–91.

IX. FEES AND CHARGES, ¶92.

X. PAYMENT, ¶93–95.

XI. COLLECTION, ¶96–98.

XII. REFUND, ¶99.

XIII. DRAWBACK, ¶100.

XIV. RECOVERY OF DUTIES PAID, ¶101–119.

XV. VIOLATIONS OF CUSTOMS LAWS, ¶120–136.

**I. VALIDITY, CONSTRUCTION, AND OPERATION OF CUSTOMS LAWS IN GENERAL.**

1. Power to impose duties on imports or exports.
2. Constitutionality of customs laws.
3. Tariff acts in general.
4. Changes in tariffs.
5. — In general.
6. — Amendment or repeal of provisions.

**114. CUSTOMS DUTIES****I. VALIDITY, CONSTRUCTION, AND  
OPERATION OF CUSTOMS LAWS  
IN GENERAL.(Cont'd)**

7. — Time of taking effect.
8. — Effect as to goods in course of im-  
portation.
9. — Effect as to goods in bond.
10. Treaty provisions.
- 10.1. — In general.
11. — Reciprocity.
12. General rules of construction.
13. Trade with island possessions and canal  
zone.
14. Importation within meaning of customs  
laws.
15. Accrual of right to duty.
16. Construction as to classification of goods.
17. — In general.
18. — Commercial designation.
19. — Use of article.
20. — Articles imported in separate parts.
21. Discriminating duties.
- 21.5. Countervailing or dumping duties.  
*See also* ¶72, below.
  - (1). In general.
  - (2). Bounties or grants.
  - (3). Foreign market value, fair value,  
and adjustment.
  - (4). Injury, material and negative.
  - (5). Proceedings.
22. Prohibition of importation.
- 22.1. Foreign trade zones.
- 22.5. Relief from injury caused by import  
competition.

**II. GOODS SUBJECT TO DUTY,  
RATE, AND AMOUNT.**

23. Nature of goods subject to duty in gener-  
al.
24. Chemicals, oils, and paints.
  - (1). In general.
  - (2). Medicinal preparations.
  - (3). Preparations of coal tar.
  - (4). Paints, colors, or varnishes.
  - (5). Oils.
25. Earths, earthenware, and glassware.
  - (1). In general.
  - (2). Brick and tile.
  - (3). Pumice stone.
  - (4). Clays or earths.

**II. GOODS SUBJECT TO DUTY, RATE,  
AND AMOUNT.(Cont'd)**

- (5). Earthenware and china.
- (6). Carbons.
- (7). Glass and glassware in general.
- (8). Bottles containing merchandise.
- (9). Marble and stone.
26. Metals and manufactures thereof.
  - (1). In general.
  - (2). Manufactures.
  - (3). Articles not specially provided for.
27. Wood and manufactures thereof.
28. Sugar.
29. Tobacco and manufactures thereof.
30. Agricultural products and provisions.
  - (.5). In general.
  - (1). Farm and field products.
  - (2). Fish.
  - (3). Fruits.
  - (4). Wool grease.
  - (5). Miscellaneous products.
31. Spirits, wines, and other beverages.
32. Cotton manufactures.
  - (1). In general.
  - (2). Wearing apparel.
  - (3). Handkerchiefs.
  - (4). Cords and thread.
  - (5). Trimmings, bindings, and tapes.
  - (6). Manufactures not specially provid-  
ed for.
33. Flax, hemp, and jute, and manufactures  
thereof.
  - (1). In general.
  - (2). Hemp unmanufactured.
  - (3). Woven fabrics of flax.
  - (4). Laces and lace trimmed articles.
  - (5). Twine, thread, and tape.
  - (6). Braids.
  - (7). Embroidered articles.
  - (8). Handkerchiefs not embroidered.
  - (9). Crash, canvas, and burlaps.
  - (10). Bags and bagging.
  - (11). Rugs, carpets, and linoleum.
34. Wool and manufactures of wool.
  - (.5). In general.
  - (1). Wool unmanufactured.
  - (2). Wool on the skin.
  - (3). Waste and rags.
  - (4). Manufactures of wool in general.

**114. CUSTOMS DUTIES**

- II. GOODS SUBJECT TO DUTY, RATE, AND AMOUNT.**(Cont'd)
- (5). Dress goods.
  - (6). Ready-made clothing and wearing apparel.
  - (7). Bindings, gorings, and webbings.
  - (8). Carpets and rugs.
  - (9). Miscellaneous manufactures of wool.
  - (10). Goat hair and manufactures thereof.
  - 35. Silks and silk goods.
    - (1). In general.
    - (2). Thread and twist.
    - (3). Manufactures of silk in general.
    - (4). Woven fabrics in general.
    - (5). Jacquard figured silks.
    - (6). Pile fabrics.
    - (7). Wearing apparel.
    - (8). Trimmings or galloons.
    - (9). Laces and nets.
    - (10). Cords.
  - 35.2. Manufactures of rayon or other synthetic textile.
  - 36. Pulp, papers, and books.
    - (1). In general.
    - (2). Paper stock.
    - (3). Printing paper.
    - (4). Handmade paper.
    - (5). Surface coated and parchment paper.
    - (6). Tissue, crepe, and filtering papers.
    - (7). Fancy paper.
    - (8). Lithographic prints and engravings.
    - (9). Printed matter, books, and periodicals.
    - (10). Scrapbooks and albums.
    - (11). Photographs.
    - (12). Envelopes.
    - (13). Manufactures of paper.
    - (14). Paper not otherwise provided for.
  - 37. Sundries.
    - (.5). In general.
    - (1). Artificial or ornamental grains, leaves or flowers.
    - (2). Beads or spangles.
    - (3). Bone.
    - (4). Coal.

- II. GOODS SUBJECT TO DUTY, RATE, AND AMOUNT.**(Cont'd)
- (5). Feathers.
  - (6). Furs and skins.
  - (7). Haircloth.
  - (8). India rubber and manufactures.
  - (9). Jewelry, pearls, and precious stones, and imitations thereof.
  - (10). Leather and manufactures thereof.
  - (11). Mother-of-pearl.
  - (12). Paintings.
  - (13). Smokers' articles.
  - (14). Statuary.
  - (15). Toys.
  - (16). Waste.
  - (17). Miscellaneous products and manufactures.
  - 38. Free list.
    - (.5). In general.
    - (1). Importations for religious, scientific, or educational purposes.
    - (2). Personal and household effects of persons arriving in United States.
    - (3). Collections of antiquities.
    - (4). Asphaltum.
    - (5). Chemicals, oils, and paints.
    - (6). Earths, earthenware, and glassware.
    - (7). Metals and manufactures thereof.
    - (8). Wood and manufactures thereof.
    - (9). Animals, agricultural products, and provisions.
    - (10). Wool.
    - (11). Silks and silk goods.
    - (12). Books and other publications.
    - (13). Sundries.
  - 39. Nonenumerated articles.
  - 40. — In general.
  - 41. — Raw or unmanufactured articles.
  - 42. — Partly manufactured articles.
  - 43. — Manufactured articles.
  - 44. — Similitude to articles enumerated in general.
  - 45. — Similitude to two or more enumerated articles.
  - 46. Reciprocity provisions.
  - 47. Packages and coverings.
  - 48. Exported goods reimported.

**114. CUSTOMS DUTIES****II. GOODS SUBJECT TO DUTY, RATE, AND AMOUNT.**(Cont'd)

- 49. Importation in bond.
- 49.1. — In general.
- 50. — Materials for vessels for foreign account or trade.
- 51. — Ores or metals imported for smelting or refining.
- 52. Evidence as to classification.

**III. COLLECTION DISTRICTS AND OFFICERS.**

- 53. Authority of Secretary of Treasury in general.
- 54. Customs officers in general.
- 55. Collectors.
- 56. Surveyors.
- 57. Appraisers.
- 58. General appraisers.
- 59. Merchant appraisers.
- 60. Inspectors and other subordinate officers.
- 60.5. Customs brokers.

**IV. ENTRY OF GOODS.**

- 61. Arrival and report of vessel.
- 62. Manifests.
- 63. Entry in general.
- 64. Invoices.
- 65. Declarations and statements accompanying invoices.
- 66. Entry without invoice.
- 67. Personal effects of passengers.
- 68. Entry of articles as exempt from duty.
- 69. Permit to land.
- 70. Unlading.

**V. APPRAISAL.**

- 71. Appraisal.
- 72. — In general.  
*Countervailing and dumping duties, see ¶21.5, above.*
- 73. — Examination of goods.
- 74. — Determination of quantity of goods.
- 75. — Valuation of goods.
  - (1). In general.
  - (2). United States selling price or value.
  - (3). Market value; foreign value.
  - (4). Cost of production; constructed value.
  - (5). Sale for export; export value.

**V. APPRAISAL.**(Cont'd)

- (6). Particular parts or products.
- (7). Evidence.
- 76. — Value of foreign money.
- 77. — Additions to entered value, and additional duties.
- 78. — Deductions and allowances.
- 79. — Conclusiveness and effect.
- 80. Reappraisal and revision.

**VI. LIQUIDATION AND RELIQUIDATION.**

- 81. In general.

**VII. PROTESTS AND REVIEW.**

- 82. Protests.
- 83. Appeal to Secretary of Treasury.
- 84. Court of International Trade (formerly Customs Court) and proceedings therein.
  - (1). In general.  
*Establishment and organization of Court of International Trade, see FEDERAL COURTS ¶2005.*
  - (2). Proceedings in general.
  - (3). Time for instituting proceedings.
  - (4). Parties.
  - (5). Discovery and depositions.
  - (6). Scope of inquiry or review.
  - (7). Evidence.
  - (8). Determination, judgment, and relief; summary judgment.
  - (8.1). — In general.
  - (9). — Conclusiveness; stare decisis and law of the case.
- 85. Court of Appeals for the Federal Circuit (formerly Court of Customs and Patent Appeals) and proceedings therein.
  - (.5). In general.
  - (1). Decisions and questions reviewable, parties, and persons entitled.
  - (2). Jurisdiction of courts.
  - (3). Mode of review.
  - (4). Necessity, sufficiency, operation, and effect of protest.
  - (5). Time of taking proceedings.
  - (6). Return of appraisers.
  - (7). Assignment or statement of errors and briefs.
  - (8). Additional proofs and trial of cause anew.

**114. CUSTOMS DUTIES****VII. PROTESTS AND REVIEW.**(Cont'd)

- (9). Presumptions and burden of proof.
- (10). Discretion of boards or officers.
- (11). Questions of fact, findings, and decision.
- (12). Harmless error.
- (13). Determination and disposition of cause.
- (14). Costs.

**VIII. BONDS AND WAREHOUSES.**

- 86. Bonds for duties.
- 87. Bonded warehouses.
- 88. Deposit of goods in warehouse.
- 89. Custody and disposition of goods deposited in warehouse.
- 90. Transportation in bond.
- 91. Withdrawal from bond.

**IX. FEES AND CHARGES.**

- 92. In general.

**X. PAYMENT.**

- 93. Obligation to pay.
- 94. Payment in general.
- 95. Payment under protest.

**XI. COLLECTION.**

- 96. Actions for duties.
- 97. Lien for duties and enforcement thereof.
- 98. Lien of carrier and collection of carrier's charges.

**XII. REFUND.**

- 99. In general.

**XIII. DRAWBACK.**

- 100. In general.

**XIV. RECOVERY OF DUTIES PAID.**

- 101. Right of action in general.
- 102. Statutory provisions.
- 103. Conditions precedent.
- 104. — In general.
- 105. — Protest.
- 106. — Appeal.
- 107. Defenses.
- 108. Persons entitled to sue.

**XIV. RECOVERY OF DUTIES PAID.**(Cont'd)

- 109. Officers and persons liable.
- 110. Jurisdiction and venue.
- 111. Time to sue and limitations.  
*See also LIMITATION OF ACTIONS.*
- 112. Pleading.
- 113. Evidence.
- 114. Amount of recovery.
- 115. Recovery of interest.
- 116. Trial.
- 117. Execution and enforcement of judgment.
- 118. Appeal and error.
- 119. Costs.

**XV. VIOLATIONS OF CUSTOMS LAWS.**

- 120. Nature and elements of offenses in general.
- 120.1. — In general.
- 121. — Construction and operation of penal statutory provisions.
- 122. — Criminal intent.
- 123. — Criminal act or omission.
- 124. Offenses by vessels, their masters, or crews, or other carriers.
- 125. Offenses by owners or others in regard to importation of goods.
- 126. Searches and seizures.
  - (1). In general.
  - (2). Grounds or cause for stop, search, or seizure.
  - (3). Particular objects or products.
  - (3.1). — In general.
  - (4). — Drugs and narcotics.
  - (5). Time and distance factors; check-points.
  - (6). Vessels, crew, and cargo.
  - (7). Airports and airplanes.
  - (8). Mail.
  - (9). Scope and nature; successive or secondary searches.
  - (9.1). — In general.
  - (10). — Personal, skin, or strip searches; pat-down.
- 127. Resistance to or interference with officers.
- 128. Offenses by officers.
- 129. Penalties and actions therefor.
- 130. Forfeitures.
  - (1). In general.
  - (2). Statutory provisions.

**115. DAMAGES****XV. VIOLATIONS OF CUSTOMS  
LAWS.(Cont'd)**

- (3). Property subject.
- (4). Grounds.
- (4.1). — In general.
- (5). — Involuntary entry.
- (6). — Knowledge or intent.
- (7). — Unloading without permit or report.
- (8). — Failure of passenger to declare dutiable merchandise.
- (9). — Absence or insufficiency of manifest.
- (10). — False invoices or entries.
- (11). — Importation of liquor or other contraband.
- (12). Rights of third persons.
- 131. Custody and disposition of property seized or forfeited.
- 132. Remission or release of forfeitures.
- 133. Proceedings for enforcement of forfeitures.
  - (1). In general.
  - (2). Jurisdiction.
  - (3). Limitations.
- See also LIMITATION OF ACTIONS.*
- (4). Parties.
- (5). Pleading.
- (6). Evidence.
- (7). Trial and reference.
- (8). Judgment.
- (9). New trial.
- (10). Review.
- 134. Criminal prosecutions.
- 135. Disposition of proceeds of penalties, forfeitures, and fines.
- 136. Rewards.

**115. DAMAGES****SUBJECTS INCLUDED**

Pecuniary compensation, indemnity or satisfaction allowed by law for injuries by the unlawful act or default of another

Nature and grounds of recovery thereof in general

Rights to substantial or nominal damages, to immediate, consequential, remote or prospective damages, and to compensatory or exemplary damages

Penalties and liquidated damages and measure of damages for breach of contract in general

Measure of damages for torts in general

Interest as an element of damages

What amounts are inadequate or excessive as awards of damages

Proceedings relating to recovery and assessment of damages in general

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Correction of errors in and review of awards of damages, see NEW TRIAL, APPEAL AND ERROR, FEDERAL CIVIL PROCEDURE, and FEDERAL COURTS

Death, damages for, see DEATH

Exemplary damages for particular torts, see AUTOMOBILES and other specific topics

Expenses of litigation awarded as costs rather than damages, see COSTS

Frivolous or vexatious appeal, damages for, see COSTS

Grounds of recovery of damages, and causes of action, see ACTION and other specific topics

Legal process, damages from wrongful use or abuse, see PROCESS, CREDITORS' REMEDIES, and other specific topics

Particular classes of contracts or of injuries to person, property, reputation, etc., measure of damages, see specific topics

Proximate and remote causes of injury, distinctions between, see NEGLIGENCE, AUTOMOBILES and other specific topics

I. NATURE AND GROUNDS IN GENERAL, ¶1-7.

II. NOMINAL DAMAGES, ¶8-14.

III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES, ¶15-73.

(A) DIRECT OR REMOTE, CONTINGENT, OR PROSPECTIVE CONSEQUENCES OR LOSSES, ¶15-57.61.

**115. DAMAGES****III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES**

—Cont'd

**(A) DIRECT OR REMOTE, CONTINGENT, OR PROSPECTIVE CONSEQUENCES OR LOSSES**

—Cont'd

1. IN GENERAL, ⅈ15–46.10.
2. MENTAL SUFFERING AND EMOTIONAL DISTRESS, ⅈ57–57.61.

**(B) AGGRAVATION, MITIGATION, AND REDUCTION OF LOSS,**

ⅈ58–65.

**(C) INTEREST, ⅈ66–69.****(D) EXPENSES OF LITIGATION,**

ⅈ70–73.

**IV. LIQUIDATED DAMAGES AND PENALTIES, ⅈ74–86.****V. EXEMPLARY DAMAGES, ⅈ87–94.10.****VI. MEASURE OF DAMAGES, ⅈ95–126.****(A) INJURIES TO THE PERSON,**

ⅈ95–102.

**(B) INJURIES TO PROPERTY,**

ⅈ103–116.

**(C) BREACH OF CONTRACT,**

ⅈ117–126.

**VII. AMOUNT AWARDED, ⅈ127.1–140.7.****(A) IN GENERAL, ⅈ127.1–127.6.****(B) INJURIES TO THE PERSON,**

ⅈ127.7–136.

**(C) INJURIES TO PROPERTY,**

ⅈ137–139.

**(D) BREACH OF CONTRACT,**

ⅈ139.5–140.

**(E) MENTAL SUFFERING AND EMOTIONAL DISTRESS,**

ⅈ140.5–140.7.

**VIII. PLEADING, ⅈ141–162.****IX. EVIDENCE, ⅈ163–192.****X. PROCEEDINGS FOR ASSESSMENT,**

ⅈ193–224.

**XI. COMPUTATION AND AMOUNT,**

ⅈ225–226.

**XII. DOUBLE AND TREBLE DAMAGES,**

ⅈ227.

**XIII. REMISSION OF EXCESS, ⅈ228.****I. NATURE AND GROUNDS IN GENERAL.**

1. Nature and theory of pecuniary reparation.
2. What law governs.
3. Injuries for which pecuniary reparation may be made.
4. Presumptions as to damage from injury.
5. General and special damage.

**I. NATURE AND GROUNDS IN GENERAL.(Cont'd)**

6. Certainty as to amount or extent of damage.
7. Right to damages as right of property.

**II. NOMINAL DAMAGES.**

8. Nature and theory of award.
9. Award irrespective of actual damage.
10. Nominal or substantial damages.
11. — In general.
12. — Extent of damage not shown.
13. — Damage not pecuniary.
14. Amount of nominal damages.

**III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES.****(A) DIRECT OR REMOTE, CONTINGENT, OR PROSPECTIVE CONSEQUENCES OR LOSSES.****1. IN GENERAL.**

15. Nature and theory of compensation.
16. Direct or indirect consequences.
17. Proximate or remote consequences.
18. — In general.
19. — Intervening cause of damage.
20. Natural and probable consequences of torts.
21. Natural and probable consequences of breaches of contract.
22. — In general.
23. — Under circumstances within contemplation of parties.
24. Contingent and possible consequences.
25. Prospective and anticipated consequences.
26. — In general.
27. — Completed or continuing tort.
28. — Breach of entire contract.
29. — Total or partial breach of continuing contract.
30. Elements of compensation in general.
31. Physical suffering and inconvenience.
32. — In general.
33. — Aggravation of previous injury, disease, or disability.
34. — Aggravation of injury by disease or other cause.
35. Pecuniary losses.
36. — In general.

**115. DAMAGES****III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES.(Cont'd)**

- 37. — Loss of earnings or services.
- 38. — Impairment of earning capacity.
- 39. — Loss of or injury to property.
- 40. — Loss of profits.
  - (1). In general.
  - (2). Breach of contract.
  - (3). Interruption or destruction of business.
  - (4). Preventing or delaying performance of contract with third person.
- 41. Expenses.
- 42. — In general.
- 43. — Medical treatment and care of person injured.
- 44. — Injury to property.
- 45. — Breach of contract.
- 46. — Necessity of actual payment or legal liability.
- 46.10. Motive or intent of wrongdoer as affecting award.

**2. MENTAL SUFFERING AND EMOTIONAL DISTRESS.**

*Excludes mental or emotional injury as element in case of wrongful death, see DEATH, or invasion of privacy, see TORTS, and other particular torts to which the element is peculiar, see CIVIL RIGHTS, DEAD BODIES, FALSE IMPRISONMENT, LIBEL AND SLANDER, MALICIOUS PROSECUTION, NUISANCE and TELECOMMUNICATIONS. Custodial interference, see CHILD CUSTODY §990. Pursuant to family and medical leave statutes, see LABOR AND EMPLOYMENT.*

- 57.1. In general.
- 57.2. Statutory and constitutional provisions.
- 57.3. What law governs.
- 57.4. Preemption.
- 57.5. — In general.
- 57.6. — Labor and employment.
- 57.7. Nature of conduct in general.
- 57.8. Nature of injury or threat in general.
- 57.9. — In general.
- 57.10. — Physical illness, impact, or injury; zone of danger.
- 57.11. Humiliation, insults, and indignities in general.
- 57.12. Particular cases in general.
- 57.13. Negligent infliction of emotional distress.
- 57.14. — In general.

**III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES.(Cont'd)**

- 57.15. — Nature of conduct.
- 57.16. — Nature of injury or threat.
  - (1). In general.
  - (2). Physical illness, impact, or injury; zone of danger.
- 57.17. — Humiliation, insults, and indignities.
- 57.18. — Particular cases.
- 57.19. Intentional or reckless infliction of emotional distress; outrage.
- 57.20. — In general.
- 57.21. — Elements in general.
- 57.22. — Nature of conduct.
- 57.23. — Nature of injury or threat.
  - (1). In general.
  - (2). Physical illness, impact, or injury; zone of danger.
- 57.24. — Humiliation, insults, and indignities.
- 57.25. — Particular cases.
  - (1). In general.
  - (2). Government; criminal justice.
  - (3). Media and publications.
  - (4). Health care.
  - (5). Education.
- 57.26. Injury or threat to another; bystanders.
- 57.27. — In general.
- 57.28. — In utero and childbirth.
- 57.29. — Other particular cases.
- 57.30. Fear of developing disease.
- 57.31. — In general.
- 57.32. — Exposure; physical illness, impact, or injury.
- 57.33. — Cancer.
- 57.34. — AIDS/HIV.
- 57.35. — Other particular cases.
- 57.36. Injury to property or property rights.
- 57.37. — In general.
- 57.38. — Pets and other animals.
- 57.39. — Other particular cases.
- 57.40. Debt collection practices.
- 57.41. Breach of contract or warranty.
- 57.42. — In general.
- 57.43. — Particular cases.
- 57.44. Insurance practices.
- 57.45. — In general.



**115. DAMAGES****III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES.(Cont'd)**

- 57.46. — Claims and settlement; bad faith.
- 57.47. — Workers' compensation.
- 57.48. Persons liable.
- 57.49. Privilege or immunity; exercise of legal rights.
- 57.50. Labor and employment.
- 57.51. — In general.
- 57.52. — Termination in general.
- 57.53. — Persons liable in general.
- 57.54. — Employers' statutory liability.
- 57.55. — Sex and gender.
- 57.56. — Race and national origin.
- 57.57. — Handicap, disability, or illness.
- 57.58. — Other particular cases.
- 57.59. — Privilege or immunity; exercise of legal rights.
- 57.60. Recovery for resulting physical injury.
- 57.61. Clergy and religious societies.

**(B) AGGRAVATION, MITIGATION, AND REDUCTION OF LOSS.**

- 58. Matter of aggravation.
- 59. Matter of mitigation; collateral source rule in general.
- 60. Benefits incident to injury.
- 61. Expenses incurred by wrongdoer.
- 62. Duty of person injured to prevent or reduce damage.
  - (1). In general.
  - (2). Personal injuries.
  - (3). Injuries to property.
  - (4). Breach of contract.
- 63. Reparation by wrongdoer.
- 64. Reduction of loss by insurance.
- 65. Estoppel or waiver affecting amount of damages.

**(C) INTEREST.**

- 66. Interest.
  - 66.1. — In general.
- 67. — Element of damages in general.
- 68. — Breaches of contract.
- 69. — Torts.

**(D) EXPENSES OF LITIGATION.**

- 70. Attorney fees, costs, and expenses of litigation.

**III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES.(Cont'd)**

- 70.1. — In general.
- 71. — Elements of damages in general.
- 71.5. — Under special statutory provisions.
- 72. — Litigation between person injured and wrongdoer.
- 73. — Litigation with third persons.

**IV. LIQUIDATED DAMAGES AND PENALTIES.**

*Sales of goods, see SALES* ⇨2309.

- 74. Nature as compensation for actual damage.
  - 75. Construction of stipulations.
  - 76. — In general.
  - 77. — Intent of parties.
  - 78. — Form and language of instrument.
    - (1). In general.
    - (2). Express declaration as to nature of provision.
    - (3). Contract not to engage in particular business.
    - (4). Stipulation against delay in performance.
    - (5). Default in payment of money.
    - (6). Breach of contract of sale or lease.
- Sales of goods, see SALES* ⇨2309.
- (7). Nonperformance of any one of several acts.

- 79. — Certainty as to amount of actual damage.
    - (1). In general.
    - (2). Some provisions capable of determination.
    - (3). Contract not to engage in particular business.
    - (4). Stipulation against delay in performance.
    - (5). Breach of contract of sale or lease.
- Sales of goods, see SALES* ⇨2309.
- 80. — Proportion of sum stipulated to actual debt or damage.
    - (1). In general.
    - (2). Stipulation against delay in performance.
    - (3). Breach of contract of sale or lease.
- Sales of goods, see SALES* ⇨2309.

- 81. — Deposit to be forfeited on breach.

**115. DAMAGES****IV. LIQUIDATED DAMAGES AND PENALTIES.(Cont'd)**

- 82. Alternative stipulations as provisions for liquidated damages or penalties.
- 83. Questions for jury.
- 84. Operation and effect of stipulations.
- 85. — In general.
- 86. — Total or partial breach.

**V. EXEMPLARY DAMAGES.**

- 87. Nature and theory of damages additional to compensation.
  - (1). In general.
  - (2). Necessity of actual damage.
- 88. Injuries for which exemplary damages may be awarded.
- 89. — In general.
  - (1). In general.
  - (2). Breach of contract.
- 90. — Acts punishable as crimes.
- 91.5. Grounds for exemplary damages.
  - (1). In general.
  - (2). Good faith; mistake.
  - (3). Particular cases in general.
  - (4). Products liability.
- 92. Persons for or against whom exemplary damages may be awarded.
- 93. Effect of death of wrongdoer.
- 94. Measure and amount of exemplary damages.
  - 94.1. — In general.
  - 94.2. — Nature of act or conduct.
  - 94.3. — Wealth of defendant.
  - 94.4. — Deterrence.
  - 94.5. — Costs of litigation.
  - 94.6. — Actual damage or compensatory damages; relationship and ratio.
  - 94.7. — Discretion as to amount of damages.
  - 94.8. — Constitutional limitations on amount in general.
  - 94.9. — Statutory provisions.
    - (1). In general.
    - (2). Validity.
    - (3). Retroactivity.
  - 94.10. — Amount awarded in particular cases.
    - (1). In general.
    - (2). Products liability.

**VI. MEASURE OF DAMAGES.**

*Measure of exemplary damages, see ¶94.*

**(A) INJURIES TO THE PERSON.**

- 95. Mode of estimating damages in general.
- 96. Discretion as to amount of damages.
- 97. Physical suffering and inconvenience in general.
- 98. Permanent injuries.
- 99. Loss of earnings, services, or consortium.
- 100. Impairment of earning capacity.
- 101. Expenses.
- 102. Mental suffering and emotional distress.

**(B) INJURIES TO PROPERTY.**

- 103. Mode of estimating damages in general.
- 104. Discretion as to amount of damages.
- 105. Destruction or loss of property.
- 106. Detention or loss of use of property.
- 107. Injuries to real property.
- 108. — In general.
- 109. — Temporary injuries.
- 110. — Permanent and continuing injuries.
- 111. — Buildings or other improvements.
- 112. — Growing crops, grass, shrubbery, or trees.
- 113. Injuries to personal property.
- 114. Injuries affecting limited or special rights or interests.
- 115. Injuries affecting rights of action or remedies.
- 116. Expenses.

**(C) BREACH OF CONTRACT.**

- 117. Mode of estimating damages in general.
- 118. Effect of provisions of contract.
- 119. Discretion as to amount of damages.
- 120. Failure to perform in general.
  - (1). In general.
  - (2). Work, labor, and services in general.
  - (3). Buildings and other improvements.
  - (4). Printing, publishing, and advertising.
  - (5). Board, lodging, and support.
  - (6). Sharing expenses or profits and losses.

**115. DAMAGES****VI. MEASURE OF DAMAGES.(Cont'd)**

- (7). Contracts conferring exclusive privileges or restricting competition.
- 121. Partial performance.
- 122. Delay in performance.
- 123. Defects in performance.
- 124. Prevention or obstruction of performance.
  - (1). In general.
  - (2). Value of work performed or materials furnished.
  - (3). Loss of profits and expenses incurred.
  - (4). Difference between contract price and cost of performance.
- 125. Failure to pay money.
- 126. Failure to deliver property.

**VII. AMOUNT AWARDED.****(A) IN GENERAL.**

- 127.1. In general.
- 127.2. Inadequate damages in general.
- 127.3. Excessive damages in general.
- 127.4. Statutory limitations on amount.
- 127.5. — In general.
- 127.6. — Validity.

**(B) INJURIES TO THE PERSON.**

- 127.7. In general.
- 127.8. Inadequate damages in general.
- 127.9. Excessive damages in general.
- 127.10. Temporary or permanent nature of injury in general.
- 127.11. Internal injuries in general.
- 127.12. Head and neck injuries in general; mental impairment.
- 127.13. — In general.
- 127.14. — Mouth and jaw injuries.
- 127.15. — Brain injuries in general; mental impairment.
- 127.16. Eye injuries and loss of vision.
- 127.17. Loss of hearing.
- 127.18. Arm, hand, wrist, and shoulder injuries.
- 127.19. — In general.
- 127.20. — Loss of function in general.
- 127.21. — Fractures, sprains, and connective tissue injuries.

**VII. AMOUNT AWARDED.(Cont'd)**

- 127.22. — Loss of finger.
- 127.23. — Loss of hand.
- 127.24. — Loss of arm.
- 127.25. Leg, foot, knee, and hip injuries.
- 127.26. — In general.
- 127.27. — Loss of function in general.
- 127.28. — Fractures, sprains, and connective tissue injuries.
- 127.29. — Loss of toe.
- 127.30. — Loss of foot.
- 127.31. — Loss of leg.
- 127.32. Back and spinal injuries in general.
- 127.33. — In general.
- 127.34. — Fractures, sprains, and connective tissue injuries.
- 127.35. — Disc injuries.
- 127.36. Injuries to the nervous system and paralysis.
- 127.37. — In general.
- 127.38. — Arms and the upper body.
- 127.39. — Legs and the lower body.
- 127.40. — Quadriplegia and total paralysis.
- 127.41. Injuries to sexual organs and function.
- 127.42. Injuries to the fetus and miscarriage.
- 127.43. Burns, scars, and skin injuries.
- 127.44. Multiple injuries.
- 127.45. Loss of earnings.
- 127.46. — In general.
- 127.47. — Internal injuries in general.
- 127.48. — Head and neck injuries in general; mental impairment.
- 127.49. — Eye injuries and loss of vision.
- 127.50. — Loss of hearing.
- 127.51. — Arm, hand, wrist, and shoulder injuries.
- 127.52. — Leg, foot, knee, and hip injuries.
- 127.53. — Back and spinal injuries in general.
- 127.54. — Injuries to the nervous system and paralysis.
- 127.55. — Burns, scars, and skin injuries.
- 127.56. — Multiple injuries.
- 127.57. Impairment of earning capacity.
- 127.58. — In general.
- 127.59. — Internal injuries in general.
- 127.60. — Head and neck injuries in general; mental impairment.

**115. DAMAGES****VII. AMOUNT AWARDED.**(Cont'd)

- 127.61. — Eye injuries and loss of vision.
- 127.62. — Loss of hearing.
- 127.63. — Arm, hand, wrist, and shoulder injuries.
- 127.64. — Leg, foot, knee, and hip injuries.
- 127.65. — Back and spinal injuries in general.
- 127.66. — Injuries to the nervous system and paralysis.
- 127.67. — Burns, scars, and skin injuries.
- 127.68. — Multiple injuries.
- 127.69. Expenses of, and loss of services performed by, injured person.
- 127.70. — In general.
- 127.71. — Medical treatment and custodial care.
  - (1). In general.
  - (2). Future expenses.
- 127.72. Loss of consortium, services, or earnings arising out of injury to another.
- 127.73. — In general.
- 127.74. — Husband and wife.
- 127.75. — Parent and child.

**(C) INJURIES TO PROPERTY.**

- 137. In general.
- 138. Real property.
- 139. Personal property.

**(D) BREACH OF CONTRACT.**

- 139.5. In general.
- 140. Particular cases.

**(E) MENTAL SUFFERING AND EMOTIONAL DISTRESS.**

- 140.5. In general.
- 140.7. Particular cases.

**VIII. PLEADING.**

- 141. Allegations as to damage in general.
- 142. General or special damage.
- 143. Personal injuries and physical suffering.
- 144. Loss of earnings, services, or consortium.
- 145. Impairment of earning capacity.
- 146. Loss of or damage to property.
- 147. Loss of profits.
- 148. Expenses.

**VIII. PLEADING.**(Cont'd)

- 149. Mental suffering and emotional distress.
- 150. Stipulations as to liquidated damages, and penalties.
- 151. Grounds for exemplary damages.
- 152. Grounds for double or treble damages.
- 153. Allegations as to amount of damage.
- 154. Defenses in general.
- 155. Matter of mitigation.
- 156. Issues, proof, and variance.
- 157. — In general.
  - (1). In general.
  - (2). Aggravation or mitigation of damages.
  - (3). Liquidated damages and penalties.
  - (4). Interest on amount of recovery.
  - (5). Exemplary damages.
  - (6). Special damages in general.
- 158. — Personal injuries and physical suffering.
  - (5). In general.
  - (1). Extent of injury in general.
  - (2). Consequences of injury in general.
  - (3). Extent of direct and consequential injuries to women.
  - (4). Extent of direct and consequential injuries to brain, nervous system, or senses.
  - (5). Aggravation of pre-existing injury or disease.
  - (6). Mode and incidents of treatment of injury.
  - (7). Permanent or future injuries.
- 159. — Pecuniary losses.
  - (1). In general.
  - (2). Loss of earnings or services.
  - (3). Impairment of earning capacity.
  - (4). Loss of profits.
  - (5). Injuries to property.
  - (6). Breach of contract.
  - (7). Amount of damages.
  - (8). Pleading and proof as to value.
- 160. — Expenses.
- 161. — Mental suffering and emotional distress.
- 162. Defects and objections and waiver thereof.

**115. DAMAGES****IX. EVIDENCE.**

- 163. Presumptions and burden of proof.
  - (.5). In general.
  - (1). Necessity of proof as to damages in general.
  - (2). Mitigation of damages and reduction of loss.
  - (3). Liquidated damages and penalties.
  - (4). Amount of damages.
- 164. Admissibility.
- 165. — In general.
- 166. — Personal injuries and physical suffering.
  - (1). In general.
  - (2). Probable effect of injuries.
- 167. — Expectancy of life of person injured.
- 168. — Health and physical condition of person injured.
  - (.5). In general.
  - (1). Conditions preceding injury.
  - (2). Subsequent physical condition.
- 169. — Character and habits of person injured.
- 170. — Domestic relations of person injured.
- 171. — Pecuniary condition of person injured.
- 172. — Loss of earnings, services, or consortium.
  - (1). In general.
  - (2). Loss of services of wife or child.
- 173. — Impairment of earning capacity.
  - (1). In general.
  - (2). Trade or business forming basis for determination of earning capacity.
- 174. — Loss of or damage to property.
  - (1). In general.
  - (2). Injuries to animals.
  - (3). Injuries to land and to crops, trees, and improvements thereon.
- 175. — Breach of contract.
- 176. — Loss of profits.
- 177. — Expenses.
- 178. — Mental suffering and emotional distress.
- 179. — Intent, malice, or motive of defendant.

**IX. EVIDENCE.(Cont'd)**

- 180. — Character of defendant.
- 181. — Pecuniary condition of defendant.
- 182. — Aggravation, mitigation, and reduction of loss.
- 183. Weight and sufficiency.
- 184. — In general.
- 185. — Personal injuries and physical suffering.
  - (1). In general.
  - (2). Permanent character of injury.
  - (3). Disease resulting from injury.
- 186. — Loss of earnings, services, or consortium.
- 187. — Impairment of earning capacity.
- 188. — Loss of or damage to property.
  - (.5). In general.
  - (1). Extent of damage in general.
  - (2). Value of property.
  - (3). Consequences of injury.
- 189. — Breach of contract in general.
- 189.5. — Punitive damages.
- 190. — Loss of profits.
- 191. — Expenses.
- 192. — Mental suffering and emotional distress.

**X. PROCEEDINGS FOR ASSESSMENT.**

- 193. Inquest on default or interlocutory judgment.
- 193.1. — In general.
- 194. — Nature and form of proceeding.
- 195. — Entry of default or judgment.
- 196. — Time for assessing damages.
- 197. — Writ of inquiry.
- 198. — Assessment by jury.
- 199. — Assessment by court without jury.
- 200. — Assessment by clerk or other officer.
- 201. — Reference for assessment.
- 202. — Notice to defendant.
- 203. — Scope of issues and questions considered.
- 204. — Rights of parties in general.
- 205. Assessment at trial of issues in general.
- 206. Physical or mental examination of person injured.
  - (.5). In general.

**115. DAMAGES****X. PROCEEDINGS FOR  
ASSESSMENT.(Cont'd)**

- (1). Power and duty of court to require examination.
- (2). Necessity for examination and grounds of objection.
- (3). Successive examinations.
- (4). Time of application.
- (5). Application and proceedings thereon.
- (6). Persons making examination.
- (7). Mode of examination.
- (8). Refusal to submit to examination.
- 207. Reception of evidence as to damages.
- 208. Questions for jury.
  - (1). In general.
  - (2). Physical suffering and inconvenience resulting from injuries.
  - (3). Permanent character of injuries and future suffering.
  - (4). Loss of earnings, services, or consortium and impairment of earning capacity.
  - (5). Expenses.
  - (6). Mental suffering and emotional distress.
  - (7). Aggravation, mitigation, and reduction of loss.
  - (8). Exemplary damages.
  - (9). Interest as element of damages.
- 209. Instructions.
- 210. — In general.
  - (1). In general.
  - (2). Limiting recovery to amount claimed or proved.
  - (3). Apportionment of damages between complainants.
  - (4). Interest as element of damages.
- 211. — Nominal or substantial damages.
- 212. — Mode of estimating compensatory damages in general.
- 213. — Aggravation of damages.
- 214. — Mitigation or reduction of damages.
- 215. — Exemplary damages.
  - (1). In general.
  - (2). Sufficiency of pleading and proof.
  - (3). Amount and mode of estimation.
- 216. — Measure of damages for injuries to the person.

**X. PROCEEDINGS FOR  
ASSESSMENT.(Cont'd)**

- (1). In general.
- (2). Sufficiency of pleadings and proof in general.
- (3). Instructions authorizing double recovery.
- (4). Physical suffering and inconvenience resulting from injuries.
- (5). Expectancy of life of person injured.
- (6). Permanent injuries.
- (7). Future pain and suffering.
- (8). Loss of earnings, services, or consortium, and impairment of earning capacity.
- (9). Expenses.
- (10). Mental suffering and emotional distress.
- 217. — Measure of damages for injuries to property.
- 218. — Measure of damages for breach of contract.
- 219. Verdict and findings.
- 219.1. — In general.
- 220. — General verdict.
- 221. — Special interrogatories and findings by jury.
  - (1). In general.
  - (2). Questions to be submitted.
  - (2.1). — In general.
  - (3). — Workers' compensation cases.
  - (4). Requests for special findings.
  - (5). Preparation and form of interrogatories or findings.
  - (5.1). — In general.
  - (6). — Conformity to issues; assumption of facts.
  - (7). Sufficiency of verdict or findings.
  - (8). Construction and operation.
- 222. — Findings by court or referee.
- 222.5. Operation and effect of inquest or assessment.
- 223. Objections and exceptions to inquest or assessment.
- 224. Setting aside inquest or assessment.

**115. DAMAGES****XI. COMPUTATION AND AMOUNT.**

225. Time to which damages may be recovered.

226. Computation of amount.

**XII. DOUBLE AND TREBLE DAMAGES.**

227. In general.

**XIII. REMISSION OF EXCESS.**

228. In general.

**116. DEAD BODIES****SUBJECTS INCLUDED**

Personal rights, duties and liabilities of relatives and representatives of one deceased in respect of the possession and disposition, by burial or otherwise, of the body

Offenses relating to disposal of dead bodies

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Cemeteries, regulation and property rights, see CEMETERIES

Decedent's estates, liabilities of, see EXECUTORS AND ADMINISTRATORS

Health, regulations for protection of, see HEALTH

Inquests as to cause of death, see CORONERS

1. Right of possession and disposition in general.
2. Burial.
3. — In general.
4. — Determination of place.
5. — Removal from place of former burial; injunction.
6. — Liabilities for expenses.
7. Offenses.
8. Criminal prosecutions.
9. Civil liabilities.

**117. DEATH****SUBJECTS INCLUDED**

Presumptions and proof as to death and survivorship in general

Actions for causing death

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Effect of death, and proceedings founded thereon, see CONTRACTS, DESCENT AND DISTRIBUTION, EXECUTORS AND ADMINISTRATORS, ABATEMENT AND REVIVAL, JUDGMENT and other specific topics

Evidence of death, sufficiency for particular purposes, see DESCENT AND DISTRIBUTION and other specific topics

Intoxicants, actions for damages from death caused by, see ALCOHOLIC BEVERAGES VI, CONTROLLED SUBSTANCES ¶13

Negligence and wrongful acts causing death as grounds of actions for damages, see CARRIERS, LABOR AND EMPLOYMENT, NEGLIGENCE and other specific topics

I. EVIDENCE OF DEATH, ¶1-4.

II. EVIDENCE OF SURVIVORSHIP, ¶5-6.

III. ACTIONS FOR CAUSING DEATH, ¶7-109.

(A) RIGHT OF ACTION AND DEFENSES, ¶7-33.

(B) JURISDICTION, ¶34-35.

(C) VENUE, ¶36.

(D) LIMITATIONS, ¶37-39.

(E) PARTIES, ¶40-44.

(F) PLEADING, ¶45-57.

(G) EVIDENCE, ¶58-77.

(H) DAMAGES OR COMPENSATION, ¶78-101.

(I) TRIAL, ¶102-106.

(J) JUDGMENT, ¶107.

(K) REVIEW, ¶108.

(L) COSTS, ¶109.

**I. EVIDENCE OF DEATH.**

1. Presumption as to continuance of life.
2. Presumption as to death from absence.
  - (1). In general.
  - (2). Time of death.

**117. DEATH****I. EVIDENCE OF DEATH.(Cont'd)**

- (3). Matters rebutting presumptions.
- 3. Admissibility of evidence as to death.
- 4. Weight and sufficiency of evidence as to death.

**II. EVIDENCE OF SURVIVORSHIP.**

- 5. Presumptions as to survivorship.
- 6. Evidence as to survivorship.

**III. ACTIONS FOR CAUSING DEATH.****(A) RIGHT OF ACTION AND DEFENSES.**

- 7. Nature and form of remedy.
- 8. What law governs.
- 8.5. Preemption.
- 9. Constitutional and statutory provisions.
- 10. Survival of right of action of person injured.
- 11. Creation of new cause of action.
- 12. Grounds of action.
- 13. — In general.
- 14. — Nature of act or omission causing death.
  - (1). In general.
  - (2). Willful or wanton acts and gross negligence.
- 15. — Right of action of person injured.
- 16. — Instantaneous death.
- 17. — Proximate cause of death.
- 18. — Loss or injury resulting from death.
  - (1). In general.
  - (2). Loss by parent of services of child.
  - (3). Dependency on decedent for support.
- 19. Conditions precedent.
- 20. Defenses.
- 21. — In general.
- 22. — Negligence of fellow servant of deceased.
- 23. — Contributory negligence of deceased.
- 24. — Contributory negligence of plaintiff or beneficiary.
- 25. — Satisfaction or release.
- 26. — Pendency of other action.
- 27. — Former recovery.
- 28. Abatement or survival on death of party.
- 28.1. — In general.
- 29. — Death of plaintiff or beneficiary.

**III. ACTIONS FOR CAUSING DEATH.(Cont'd)**

- 30. — Death of defendant.
  - 31. Persons entitled to sue.
    - (1). In general.
    - (2). Nonresidents and aliens.
    - (3). Personal representatives.
    - (3.1). — In general.
    - (4). — Foreign administrator.
    - (5). Heirs and next of kin.
    - (6). Surviving husband or wife.
    - (7). Parent.
    - (8). Child or grandchild.
  - 32. Persons for whose benefit suit may be maintained.
  - 33. Persons liable.
- (B) JURISDICTION.**
- 34. Jurisdiction of cause of action.
  - 34.1. — In general.
  - 35. — Actions under laws of other state or foreign country.

**(C) VENUE.**

- 36. Venue.

**(D) LIMITATIONS.**

- 37. Application of general statutes of limitations.  
*See also LIMITATION OF ACTIONS.*
- 38. Special limitations.
- 39. Computation of period of limitation.

**(E) PARTIES.**

- 40. Plaintiffs.
- 41. — In general.
- 42. — Joinder.
- 43. Defendants.
- 44. Intervention, addition, or substitution of parties.

**(F) PLEADING.**

- 45. Declaration, complaint, or petition.
- 45.1. — In general.
- 46. — Form and requisites in general.
- 47. — Act or omission causing death.
- 48. — Statute giving right of action.
- 49. — Existence of beneficiaries.
  - (1). In general.
  - (2). Pecuniary interest in life of decedent.



**117. DEATH****III. ACTIONS FOR CAUSING DEATH.(Cont'd)**

- 50. — Appointment of personal representative.
- 51. — Compliance with statutory requirements.
- 52. — Damages.
- 53. Indictment.
- 54. Plea or answer.
- 55. Amended and supplemental pleadings.
- 56. Bill of particulars.
- 57. Issues, proof, and variance.

**(G) EVIDENCE.**

- 58. Presumptions and burden of proof.
  - (1). In general.
  - (2). Necessity of proving loss or injury and the amount thereof.
- 59. Admissibility of evidence.
- 60. — In general.
- 61. — Cause of death.
- 62. — Dying declarations.
- 63. — Injuries to deceased.
- 64. — Loss or injury resulting from death.
- 65. — Expectancy of life of deceased.
- 66. — Health and physical condition of deceased.
- 67. — Earning capacity of deceased.
- 68. — Character and habits of deceased.
- 69. — Domestic relations of deceased.
- 70. — Pecuniary condition of deceased.
- 71. — Expectancy of life of plaintiff or beneficiary.
- 72. — Pecuniary condition of plaintiff or beneficiary.
- 73. — Pecuniary condition of defendant.
- 74. Weight and sufficiency of evidence.
- 75. — In general.
- 76. — Cause of death.
- 77. — Damages.

**(H) DAMAGES OR COMPENSATION.**

- 78. Compensation for loss or injury resulting from death in general.
- 79. Nominal damages.
- 80. Elements of compensation.
- 81. — In general.
- 82. — Suffering of deceased.
- 83. — Pecuniary losses to deceased.
- 84. — Medical and funeral expenses.

**III. ACTIONS FOR CAUSING DEATH.(Cont'd)**

- 85. — Pecuniary loss to plaintiff or beneficiary in general.
- 86. — Loss of prospective pecuniary benefits.
  - (1). In general.
  - (2). Loss of support and education and moral training.
- 87. — Loss of services.
- 88. — Loss of society.
- 89. — Mental suffering or emotional distress of plaintiff or beneficiary.
- 90. Aggravation of damages.
- 91. Mitigation or reduction of damages.
- 92. Interest on damages.
- 93. Exemplary damages.
- 94. Measure and amount awarded.
- 95. — In general.
  - (1). In general.
  - (2). Prospective earnings and accumulations of deceased.
  - (3). Prospective pecuniary benefits to beneficiaries.
  - (4). Loss of services of child.
- 96. — Statutory limitations.
- 97. — Discretion of jury.
- 98. — Inadequate damages.
- 99. — Excessive damages.
  - (1). In general.
  - (2). Suffering of deceased.
  - (3). Allowance for death of minor.
  - (4). Allowance to surviving husband, wife or children.
  - (5). Allowance to relatives other than surviving husband, wife, or children.
- 100. Fines.
- 101. Apportionment and distribution of amount recovered.

**(I) TRIAL.**

- 102. In general.
- 103. Questions for jury.
  - (.5). In general.
  - (1). Grounds of action in general.
  - (2). Cause of death.
  - (3). Defenses.
  - (4). Damages.
- 104. Instructions.

**118A. DECLARATORY JUDGMENT**

**III. ACTIONS FOR CAUSING DEATH.(Cont'd)**

- (1). In general.
- (2). Cause of death and negligence.
- (3). Expectancy of life of deceased and beneficiaries.
- (4). Elements of damages.
- (5). Damages for death of minor child.
- (6). Measure and amount awarded.

105. Verdict and findings.

106. New trial.

**(J) JUDGMENT.**

107. In general.

**(K) REVIEW.**

108. In general.

**(L) COSTS.**

109. In general.

**118A. DECLARATORY JUDGMENT**

**SUBJECTS INCLUDED**

Judgments declaring the rights of parties or expressing the opinion of the court on a question of law without ordering anything to be done

Nature and grounds of such judgments

Subjects of declaratory relief

Actions for declaratory judgment with or without other relief, and procedure therein

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Advisory opinions, and questions submitted by legislature, Governor, or other officer, see CONSTITUTIONAL LAW ¶2600 et seq., COURTS

Fiduciaries, proceedings for instructions, see EXECUTORS AND ADMINISTRATORS, TRUSTS

Moot, abstract or hypothetical cases generally, see ACTION

Wills, actions to construe not brought under declaratory judgment acts, see WILLS

**I. NATURE AND GROUNDS IN GENERAL, ¶1–80.**

- (A) IN GENERAL, ¶1–20.
- (B) CONSTITUTIONAL AND STATUTORY PROVISIONS, ¶21–40.
- (C) OTHER REMEDIES, ¶41–60.
- (D) ACTUAL OR JUSTICIABLE CONTROVERSY, ¶61–80.

**II. SUBJECTS OF DECLARATORY RELIEF, ¶81–250.**

- (A) RIGHTS IN GENERAL, ¶81–90.
- (B) STATUS AND LEGAL RELATIONS, ¶91–110.
- (C) ISSUES AND PROCEDURE, ¶111–120.
- (D) CONSTITUTIONS, ¶121.
- (E) STATUTES, ¶122–127.
- (F) ORDINANCES, ¶128–140.
- (G) WRITTEN INSTRUMENTS AND CONTRACTS, ¶141–180.
  - 1. IN GENERAL, ¶141–160.
  - 2. INSURANCE, ¶161–180.
- (H) PROPERTY AND CONVEYANCES, ¶181–187.
- (I) LIENS AND PRIORITIES, ¶188.
- (J) MORTGAGES AND TRUST DEEDS, ¶189–200.
- (K) PUBLIC OFFICERS AND AGENCIES, ¶201–230.
- (L) PATENTS, ¶231–235.
- (M) COPYRIGHTS, ¶236.
- (N) TRADEMARKS, ¶237–240.
- (O) WILLS, ¶241.
- (P) TRUSTS, ¶242.
- (Q) DECEDENTS' ESTATES, ¶243.
- (R) GUARDIANSHIP, ¶244–250.

**III. PROCEEDINGS, ¶251–395.**

- (A) IN GENERAL, ¶251–270.
- (B) JURISDICTION AND VENUE, ¶271–290.
- (C) PARTIES, ¶291–310.
- (D) PLEADING, ¶311–340.
- (E) EVIDENCE, ¶341–360.
- (F) HEARING AND DETERMINATION, ¶361–380.
- (G) JUDGMENT, ¶381–391.5.
- (H) APPEAL AND ERROR, ¶392–395.

**I. NATURE AND GROUNDS IN GENERAL.**

**(A) IN GENERAL.**

- 1. Nature and scope of remedy.
- 2. Object and purpose.
- 3. Power to render.
- 4. Right to declaratory relief in general.
- 5. Discretion of court.
  - 5.1. — In general.

**118A. DECLARATORY JUDGMENT****I. NATURE AND GROUNDS  
IN GENERAL.**(Cont'd)

- 6. — Limitation of discretion.
- 7. Necessity, utility and propriety.
- 8. Termination or settlement of controversy.
- 9. Defenses and objections in general.
- 10. Fact questions.

**(B) CONSTITUTIONAL AND STATUTORY  
PROVISIONS.**

- 21. In general.
- 22. Validity of statutes.
- 23. Construction and operation of statutes.
- 23.1. — In general.
- 24. — Object and purpose of statutes.
- 25. — Statutes as substantive or procedural.
- 26. — Liberal or strict construction.

**(C) OTHER REMEDIES.**

- 41. Existence and effect in general.
- 42. Adequacy of other remedy.
- 43. Alternative, substitute or supplemental remedy.
- 44. Statutory remedy.
- 45. Pendency of other action.
- 46. Anticipation of other action.
- 47. Questions adjudicated in other action.

**(D) ACTUAL OR JUSTICIABLE CONTROVERSY.**

- 61. Necessity.
- 62. Nature and elements in general.
- 63. Propriety of judicial determination.
- 64. Adverse interests or contentions.
- 65. Moot, abstract or hypothetical questions.
- 66. Advisory opinions.
- 67. Accrual of controversy.
- 68. Future or contingent questions.
- 69. Remote questions.

**II. SUBJECTS OF DECLARATORY RELIEF.****(A) RIGHTS IN GENERAL.**

- 81. Subjects of relief in general.
- 82. Rights and liabilities in general.
- 83. Nonliability.
- 84. Criminal laws.
- 85. Workers' compensation.

**(B) STATUS AND LEGAL RELATIONS.**

*Proceedings to determine United States citizenship, see also ALIENS, IMMIGRATION, AND CITIZENSHIP.*

- 91. In general.
- 92. Marital status.
- 92.1. — In general.
- 93. — Validity of foreign divorce.
- 94. Legitimacy and parentage.
- 95. Professions, businesses or occupations.
- 96. Corporations.
- 97. Banks and banking.
- 98. Carriers and public utilities.
- 99. Labor and employment.
- 100. Debtors and creditors.

**(C) ISSUES AND PROCEDURE.**

- 111. In general.
- 112. Rights and defenses in other actions.
- 113. Remedies.
- 114. Validity and construction of judgments and orders.

**(D) CONSTITUTIONS.**

- 121. In general.

**(E) STATUTES.**

- 122. Statutes in general.
- 122.1. — In general.
- 123. — Validity of statutes and proposed bills.
- 124. Statutes relating to particular subjects.
- 124.1. — In general.
- 125. — Corporations, carriers and public utilities.
- 126. — Employees, labor relations and unemployment compensation.
- 127. — Licenses and taxes.

**(F) ORDINANCES.**

- 128. Ordinances in general.
- 129. Zoning ordinances.

**(G) WRITTEN INSTRUMENTS AND CONTRACTS.****1. IN GENERAL.**

- 141. Written instruments in general.
- 142. Contracts in general.
- 143. Particular contracts.
- 143.1. — In general.
- 144. — Arbitration agreements.

**118A. DECLARATORY JUDGMENT****II. SUBJECTS OF DECLARATORY  
RELIEF.(Cont'd)**

- 145. — Employment and personal service contracts.
- 146. — Guaranty and suretyship contracts.
- 147. — Labor agreements.
- 148. — Land contracts.
- 149. — Marriage settlements and separation agreements.

**2. INSURANCE.**

- 161. In general.
- 162. Fire insurance.
- 163. Life and accident insurance.
- 163.1. — In general.
- 164. — Disability provisions.
- 165. Liability or indemnity insurance in general.
- 166. Automobile liability insurance.
- 166.1. — In general.
- 167. — Invalidity, termination or breach of condition of policy.
- 168. — Coverage of policy.
- 169. — Duty to defend action against insured.
- 170. — Accrual of controversy.
- 171. — Pendency of other action.
- 172. Employer's liability and workers' compensation insurance.

**(H) PROPERTY AND CONVEYANCES.**

- 181. Title and property rights in general.
- 182. Particular estates and interests.
- 183. Validity and construction of deeds.
- 184. Covenants and restrictions.
- 185. Easements and water rights.
- 186. Leases.
- 187. Mineral leases and grants.

**(I) LIENS AND PRIORITIES.**

- 188. In general.

**(J) MORTGAGES AND TRUST DEEDS.**

- 189. In general.

**(K) PUBLIC OFFICERS AND AGENCIES.**

- 201. Officers and official acts in general.
- 202. Eligibility and right to office.
- 203. Federal officers and boards.
- 204. State officers and boards.

**II. SUBJECTS OF DECLARATORY  
RELIEF.(Cont'd)**

- 205. Labor boards and agencies.
- 206. Public service commissions.
- 207. Public employees.
- 207.1. — In general.
- 208. — Classification and salaries.
- 209. Counties and municipalities and their officers.
- 210. Education.
- 211. Bonds.
- 212. Elections.
- 213. Licenses and taxes.
- 213.1. — In general.
- 214. — Liability for tax in general.
- 215. — Sales and use taxes.
- 216. — Levy, assessment, collection, and enforcement.
- 217. — Federal taxes.
- 218. Streets and highways.

**(L) PATENTS.**

- 231. Patents.
- 231.1. — In general.
- 232. — Validity of patents.
- 233. — Infringement of patents.
- 234. — Claim of infringement as condition precedent.
- 235. — Patent licenses and assignments.

**(M) COPYRIGHTS.**

- 236. In general.

**(N) TRADEMARKS.**

- 237. In general.

**(O) WILLS.**

- 241. In general.

**(P) TRUSTS.**

- 242. In general.

**(Q) DECEDENTS' ESTATES.**

- 243. In general.

**(R) GUARDIANSHIP.**

- 244. In general.

**118A. DECLARATORY JUDGMENT****III. PROCEEDINGS.****(A) IN GENERAL.**

- 251. Procedure in general.
- 252. Nature and form.
- 252.1. — In general.
- 253. — Legal or equitable.
- 254. — Other actions distinguished.
- 255. Limitations and laches.  
*See also LIMITATION OF ACTIONS.*
- 256. Process and appearance.
- 257. Service on Attorney General.
- 258. Preliminary injunction or other relief.

**(B) JURISDICTION AND VENUE.**

- 271. In general.
- 272. Jurisdiction not enlarged.
- 273. Jurisdiction of particular state courts.
- 274. Jurisdiction of federal courts.
- 274.1. — In general.
- 275. — Diversity of citizenship.
- 276. Concurrent and conflicting jurisdiction.

**(C) PARTIES.**

- 291. Parties in general.
- 292. Interest in subject matter.
- 293. Necessary and indispensable parties.
- 293.1. — In general.
- 294. — Subjects of relief in general.
- 295. — Contracts.
- 296. — Property, conveyances, and incumbrances.
- 297. — Patents.
- 298. — Wills, trusts and estates.
- 299. Proper parties.
- 299.1. — In general.
- 300. — Subjects of relief in general.
- 301. — Contracts.
- 302. Government or officers as parties.
- 302.1. — In general.
- 303. — State or state officers.
- 304. — United States or federal officers.
- 305. Representative or class actions.
- 306. New parties.

**(D) PLEADING.**

- 311. Pleading in general.
- 312. Complaint, petition or bill.
- 312.1. — In general.
- 313. — Statement of controversy.

**III. PROCEEDINGS.(Cont'd)**

- 314. — Subjects of relief in general.
- 315. — Statutes and ordinances.
- 316. — Written instruments and contracts in general.
- 317. — Insurance.
- 318. — Property, conveyances and incumbrances.
- 319. — Public officers and agencies.
- 320. — Patents and copyrights.
- 321. — Prayer for relief.
- 322. Answer, counterclaim and reply.
- 323. Counterclaim for declaratory relief in other action.
- 324. Amended and supplemental pleadings.
- 325. Demurrer.
- 326. Motions in general.
- 327. Motion to strike or dismiss complaint, petition or bill.
- 327.1. — In general.
- 328. — Grounds of motion.
- 329. Issues, proof and variance.

**(E) EVIDENCE.**

- 341. Presumptions and burden of proof.
- 341.1. — In general.
- 342. — Subjects of relief in general.
- 343. — Insurance.
- 344. Admissibility.
- 345. Weight and sufficiency.
- 345.1. — In general.
- 346. — Statutes and ordinances.
- 347. — Contracts.

**(F) HEARING AND DETERMINATION.**

- 361. Dismissal before hearing.
- 361.1. — In general.
- 362. — Grounds for involuntary dismissal in general.
- 363. — Defects and objections as to parties.
- 364. Mode and conduct in general.
- 365. Scope of inquiry and powers of court.
- 366. Questions and issues to be determined.
- 368. Questions for jury.
- 369. Verdict and findings.

**(G) JUDGMENT.**

- 381. Nature and essentials of judgment.

**119. DEDICATION**

**III. PROCEEDINGS.(Cont'd)**

- 382. Condition of cause.
- 383. Form and requisites of judgment.
- 384. Scope and extent of relief in general.
- 385. Declaratory relief.
- 386. Executory or coercive relief.
- 386.1. — In general.
- 387. — Injunction.
- 388. — Money judgment.
- 389. Dismissal or denial of relief.
- 390. Construction and operation of judgment.
- 391. Supplemental relief.
- 391.5. Costs and fees.

**(H) APPEAL AND ERROR.**

- 392. Appeal and error.
- 392.1. — In general.
- 393. — Scope and extent of review in general.
- 394. — Discretion of lower court.
- 395. — Determination and disposition of cause.

**119. DEDICATION**

**SUBJECTS INCLUDED**

- Giving or devoting real property or easements therein to the use of the public, and acceptance and revocation of such dedication
- Nature, requisites, incidents, operation and effect thereof
- Evidence relating thereto
- Estates, interests or easements created
- Rights, duties and liabilities of parties making such dedications and of the public as to the property dedicated

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Abandonment of property, see ABANDONED AND LOST PROPERTY
- Easements for quasi-public use created by private grant or reservation, see EASEMENTS

- Inventions, dedication to the public of, see PATENTS
- Literary works and the like, dedication to the public of, see COPYRIGHTS AND INTELLECTUAL PROPERTY

- I. NATURE AND REQUISITES, ¶1–45.
- II. OPERATION AND EFFECT, ¶46–65.

**I. NATURE AND REQUISITES.**

- 1. Nature and essentials in general.
- 2. Constitutional and statutory provisions.
- 3. Purpose of dedication.
- 3.1. — In general.
- 4. — Public and charitable uses in general.
- 5. — Highways and other public ways.
- 6. — Public squares, parks and commons.
- 7. — Wharves and landings.
- 8. — Schools and educational purposes.
- 9. — Churches and religious purposes.
- 10. — Cemeteries and burial grounds.
- 11. Property subject to dedication.
- 12. Title or interest of dedicator.
- 13. Capacity or authority to dedicate.
- 14. Public or body politic or corporate as grantee.
- 15. Intent to dedicate.
- 16. Acts constituting dedication.
- 16.1. — In general.
- 16.2. — Construction of improvements of a public nature.
- 17. — Express conveyance or declaration.
- 18. — Recitals or descriptions in conveyances or contracts.
  - (1). In general.
  - (2). Sales and descriptions of property with reference to way or other public ground.
- 19. — Designation in maps or plats, and sale of lots.
  - (1). In general.
  - (2). Designation of use or purpose in general.
  - (3). Undesignated parts of map or plat.
  - (4). Adoption of map or plat.
  - (5). Sale of lands with reference to map, plat, or survey.
  - (6). Sales before opening streets shown on map or plat.

**119. DEDICATION****I. NATURE AND REQUISITES.(Cont'd)**

- 20. — Abandonment to or acquiescence in public use.
  - (1). In general.
  - (2). Knowledge and consent of owner, and nature of use in general.
  - (3). Time requisite.
  - (4). Use of vacant or unclosed lands.
  - (5). Public use of private ways and improvements.
  - (6). Use and maintenance of railroad crossings.
- 21. Acts or declarations to prevent implied dedication.
- 22. Statutory dedication.
  - 22.1. — In general.
- 23. — Form and contents of instrument, map, or plat.
- 24. — Execution.
- 25. — Acknowledgment.
- 26. — Recording.
- 27. — Curing defects.
- 28. — Validity as common-law dedication.
- 29. Revocation or lapse of dedication before acceptance.
- 30. Acceptance.
  - 30.1. — In general.
- 31. — Necessity.
- 32. — Statutory requirements.
- 33. — Authority to accept.
- 34. — Time for acceptance.
- 35. — Official acts or proceedings.
  - (1). In general.
  - (2). Ordinances and resolutions in general.
  - (3). Improvement and repair.
  - (4). Acceptance of part of property dedicated.
  - (5). Acts tending to negative acceptance.
- 36. — Compliance with conditions.
- 37. — User by public.
- 38. Revocation after acceptance.
- 39. Estoppel to assert or deny dedication.
- 40. Evidence.
  - 40.1. — In general.
- 41. — Presumptions and burden of proof as to dedication.
- 42. — Presumptions and burden of proof as to acceptance.

**I. NATURE AND REQUISITES.(Cont'd)**

- 43. — Admissibility.
  - 44. — Weight and sufficiency.
  - 45. Questions for jury.
- II. OPERATION AND EFFECT.**
- 46. General rules of construction.
  - 47. Persons entitled to benefit of dedication.
  - 48. Persons bound by dedication.
  - 49. Extent of dedication.
  - 50. — In general.
  - 51. — Width of highways or other public ways.
  - 52. Title or right acquired.
  - 53. — In general.
  - 54. — Statutory dedication.
  - 55. Reservations, conditions, and restrictions.
  - 56. Use of property.
  - 57. — In general.
  - 58. — Change of use.
  - 59. Rights and liabilities as to control and care of property.
    - 59.1. — In general.
  - 60. — Public authorities.
  - 61. — Abutting owners.
  - 62. — Owners of fee or reversion.
  - 63. Abandonment or nonuser.
    - (1). In general.
    - (2). Failure to use or improve.
    - (3). Vacation.
  - 64. Misuser or diversion.
  - 65. Reversion.

**122A. DEPOSITS AND ESCROWS****SUBJECTS INCLUDED**

Money or other personal property delivered for safekeeping, either with or without compensation, to be redelivered in accordance with the purpose of the deposit

Deeds, bonds, and other obligatory writings, or money or property delivered to a person not a party thereto to be held by him until performance of a specified condition or the happening of a certain contingency and

**123. DEPOSITS IN COURT**

then to be delivered to the grantee or obligee

Rights, duties and liabilities of parties to such deliveries

Depositories of public moneys and rights, liabilities, and remedies relating thereto

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Bailments in general, see BAILMENT

Court, deposits or payment in, see DEPOSITS IN COURT, TENDER, COSTS

Death of grantor, deposit of deed for delivery on, see REAL PROPERTY CONVEYANCES

Frauds, statute of, escrow delivery as compliance, see FRAUDS, STATUTE OF

Particular occupations, deposits incident to, see FINANCE, BANKING, AND CREDIT, WAREHOUSEMEN

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- I. DEPOSITS IN GENERAL, ¶1-10.  
II. CONDITIONAL DEPOSITS OR ESCROWS, ¶11-30.  
III. DEPOSITS OF PUBLIC MONEYS, ¶31-38.

**I. DEPOSITS IN GENERAL.**

1. Nature and requisites in general.
2. Bonds or other securities.
3. Particular forms of deposits.
4. Rights and liabilities of parties.
5. Actions.

**II. CONDITIONAL DEPOSITS OR ESCROWS.**

11. Nature and requisites in general.
12. Instruments deliverable in escrow.
13. Depositories; escrow and closing agents.
14. Delivery to depository.
15. Construction of escrow agreements in general.
16. Conditions or contingencies.
17. Authority of depository to deliver.
18. Operation and effect of delivery in escrow.
- 18.1. — In general.
19. — Revocation of agreement.
20. Performance of conditions or occurrence of contingency.
21. Delivery by depository.

**II. CONDITIONAL DEPOSITS  
OR ESCROWS.(Cont'd)**

22. Time when instrument takes effect.
- 22.1. — In general.
23. — Relation back to first delivery.
24. Unauthorized or wrongful delivery by depository.
- 24.1. — In general.
25. — Ratification of wrongful delivery.
26. Redelivery to depositor.

**III. DEPOSITS OF PUBLIC MONEYS.**

31. Appointment or designation.
  32. Bonds or other securities.
  33. Making and effect of deposits.
  34. Control and disposition of deposits.
  35. Liabilities of depositories.
  36. Actions against depositories in general.
  37. Liabilities on bonds.
  38. Offenses.
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**123. DEPOSITS IN COURT**

**SUBJECTS INCLUDED**

Delivery of money or goods to courts or officers of courts, incident to civil actions, made pursuant to statute, rule or order of court, or consent of parties to the action

Rights and liabilities of the parties in respect of such money or property

Payment or delivery out of court or other disposition thereof

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Decedent's estates, payment of legacies or distributive shares into court, see EXECUTORS AND ADMINISTRATORS

Officers' duties and liabilities, see PUBLIC EMPLOYMENT, CLERKS OF COURTS and other specific topics

Public moneys, depositories of, see DEPOSITS AND ESCROWS

Security in particular proceedings, deposit of money as, see COSTS, BAIL and other specific topics



**123. DEPOSITS IN COURT**

Tender, payment of money into court incident to, see TENDER and other specific topics

1. Grounds for permitting or compelling deposit; condition of cause.
2. Application and order for deposit.
3. Deposit with clerk or other officer without authority.
4. Custody and investment of funds in general.
5. Loan of funds under order of court.
6. — In general.
7. — Bonds and other securities.
8. Duties and liabilities of depositaries.
9. Rights and liabilities of parties.
10. Withdrawal or return.
11. Disposition under judgment or order of court.
12. Proceedings for payment or delivery out of court.

**124. DESCENT AND DISTRIBUTION****SUBJECTS INCLUDED**

Transmission of property, real or personal, by hereditary succession

Right to inherit or share in the division of intestates' estates in general

Liabilities of heirs, next of kin and other distributees

Dower and curtesy interests in deceased spouse's property

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Administration of decedents' estates in general, see EXECUTORS AND ADMINISTRATORS

Community property, disposition and administration after death of spouse, see MARRIAGE AND COHABITATION

Cotenancy, see PROPERTY IV

Disabilities of aliens to inherit, see ALIENS, IMMIGRATION, AND CITIZENSHIP

Election between distributive share and other rights, see WILLS, HOMESTEAD

Escheat of property to state or government on death without heirs, see ABANDONED AND LOST PROPERTY II

Homestead rights after death of original owner, see HOMESTEAD

Joint tenancy and survivorship, see PROPERTY IV

Partnership property, administration by surviving partners or statutory partnership administrators, see PARTNERSHIP

Taxation—estate, inheritance and succession taxes, see INTERNAL REVENUE, TAXATION

I. NATURE AND COURSE IN GENERAL, ¶1–19.

II. PERSONS ENTITLED AND THEIR RESPECTIVE SHARES, ¶20–67.25.

(A) HEIRS AND NEXT OF KIN, ¶20–51.

(B) SURVIVING HUSBAND OR WIFE, ¶52–67.

(C) NONMARITAL CHILDREN, ¶67.1–67.20.

(D) ADOPTED CHILDREN, ¶67.21–67.25.

III. RIGHTS AND LIABILITIES OF HEIRS AND DISTRIBUTEES, ¶68–157.

(A) NATURE AND ESTABLISHMENT OF RIGHTS IN GENERAL, ¶68–92.

(B) ADVANCEMENTS, ¶93–118.

(C) DEBTS OF INTESTATE AND INCUMBRANCES ON PROPERTY, ¶119–152.

(D) RIGHTS AND REMEDIES OF CREDITORS OF HEIRS AND DISTRIBUTEES, ¶153–157.

IV. DOWER AND CURTESY, ¶158–186.

**I. NATURE AND COURSE IN GENERAL.**

1. Nature of succession in general.

2. What law governs.

*Nonmarital children, see ¶67.2.*

3. — In general.

4. — Real property and interests therein.

5. — Personal property.

6. Constitutional and statutory provisions.

*Nonmarital children, see ¶67.3.*

7. Operation of common law in absence of statute.

8. Property subject to descent or distribution.

**124. DESCENT AND DISTRIBUTION****I. NATURE AND COURSE  
IN GENERAL.**(Cont'd)

9. Rule of descent dependent on whether property is personalty or realty.
10. Source of title and seisin of intestate.
11. — In general.
12. — Purchase or descent.
13. — Seisin of lands descended to intestate.
14. — Descent of ancestral or parental lands on failure of issue.
15. — Descent of lands of infant dying unmarried or without issue.
16. — Reversion of gift on death without issue.
17. Descent of remainders, reversions, and executory devises.
18. Fact of death.
19. Fact of intestacy.

**II. PERSONS ENTITLED AND THEIR  
RESPECTIVE SHARES.****(A) HEIRS AND NEXT OF KIN.**

20. Kindred.
- 20.1. — In general.
21. — Consanguinity and affinity.
22. — Degrees.
23. Necessary or forced heirs.
24. Order of succession in general.
25. Descendants.
- 25.1. — In general.
26. — Children in general.  
*Nonmarital children, see §67.4.*
27. — Posthumous children.
28. — Issue of children deceased before intestate.
29. — Descent of estates tail.
30. Parents.
31. Stepchildren and stepfather or stepmother.
32. Brothers and sisters and their descendants.
33. — In general.
34. — Issue of brothers or sisters deceased before intestate.
35. — Half blood.
36. Grandparents and remote ascendants.
37. Remote collaterals.
38. — In general.

**II. PERSONS ENTITLED AND THEIR  
RESPECTIVE SHARES.**(Cont'd)

39. — Division between paternal and maternal kindred.
  40. — Issue of persons deceased before intestate.
  41. — Half blood.
  42. Shifting inheritance.
  43. Taking per stirpes or per capita.
  44. Operation and effect of will.
  45. — In general.
  46. — Devise to heir or next of kin.
  47. — Pretermitted child or issue of child.
    - (1). In general.
    - (2). Intention to disinherit child.
    - (3). Posthumous children and children born after execution of will.
  48. — Disinheritance.
  49. Disqualification to take.
  - 49.1. — In general.
  50. — Unworthiness or misconduct in general.
  51. — Causing or procuring death of intestate.
- (B) SURVIVING HUSBAND OR WIFE.**
52. Nature of right in general.
    - (1). In general.
    - (2). Rights of surviving wife in general.
    - (3). Rights of surviving husband in general.
  53. Constitutional and statutory provisions.
  54. Issue of intestate also surviving.
  55. — In general.
  56. — Issue of former marriage.
  57. Failure of issue of intestate.
  58. Failure of issue and of other kindred of intestate.
  59. Property acquired by intestate by gift, devise, or descent.
  60. — In general.
  61. — From former husband or wife.
  62. Estoppel, waiver, or release of right.
  63. Forfeiture of right.
  64. Election.
    - 64.1. — In general.
  65. — Right to and necessity for election.
  66. — Sufficiency.
  67. — Operation and effect.

**124. DESCENT AND DISTRIBUTION****(C) NONMARITAL CHILDREN.**

*Establishment and determination of heirship or right to share in distribution, see §71. Establishment and determination of parentage, see PARENT AND CHILD II, III.*

- 67.1. In general.
- 67.2. What law governs.
- 67.3. Statutory provisions.
- 67.4. Inheritance by nonmarital children.
- 67.5. — In general.
- 67.6. — From or through father.
- 67.7. — From or through mother.
- 67.8. Inheritance from or through nonmarital children.
- 67.9. Recognition, acknowledgment, or legitimation.

**(D) ADOPTED CHILDREN.**

- 67.21. In general.
- 67.22. What law governs.
- 67.23. Statutory provisions.
- 67.24. Inheritance by adopted children.
- 67.25. Inheritance from or through adopted children.

**III. RIGHTS AND LIABILITIES OF HEIRS AND DISTRIBUTEES.****(A) NATURE AND ESTABLISHMENT OF RIGHTS IN GENERAL.**

- 68. Rights of expectant heirs before death of ancestor.
- 69. Conveyances in fraud of heirs.
- 70. Release of expectant share to ancestor.
- 71. Establishment and determination of heirship or right to share in distribution.  
*Establishment and determination of parentage, see PARENT AND CHILD II, III.*
  - (1). In general.
  - (2). Limitation and laches.
  - (3). Parties and pleading.
  - (4). Presumptions and burden of proof.
  - (5). Admissibility of evidence.
  - (6). Sufficiency of evidence.
  - (7). Hearing and determination.
  - (8). Rights and liabilities of third persons.
- 72. Renunciation or release of rights.
- 73. Title of heirs or distributees.
- 74. — In general.
- 75. — Real property and interests therein.

**III. RIGHTS AND LIABILITIES OF HEIRS AND DISTRIBUTEES.(Cont'd)**

- 76. — Personal property.
  - 77. Rights as against administrator.
  - 78. Possession and control of property.
  - 79. Rents and profits, income, and accumulations.
  - 80. Claims of estate against heirs or distributees.
  - 81. Mutual rights and liabilities of heirs and distributees.
  - 82. Conveyances and other transactions between heirs and distributees.
  - 83. Actions between heirs and distributees.
  - 84. Conveyances of property by heirs or distributees.
  - 85. Alienation of land inherited from husband by widow under subsequent coverture.
  - 86. Assignments of distributive shares.
  - 87. Rights and liabilities of purchasers from or assignees of heirs or distributees.
  - 88. Actions by heirs or distributees.
  - 89. — In general.
  - 90. — Relating to real property or interests therein.
    - (.5). In general.
      - (1). Rights of action, nature of remedy, and conditions precedent.
      - (2). Jurisdiction, limitations and laches.
      - (3). Parties.
      - (4). Pleading and evidence.
      - (5). Trial, judgment and relief.
  - 91. — Relating to personal property.
    - (.5). In general.
      - (1). Rights of action, nature of remedy, and conditions precedent.
      - (2). Refusal of administrator to sue or collusion with third persons.
      - (3). Jurisdiction, limitations, and laches.
      - (4). Parties.
      - (5). Pleading and evidence.
      - (6). Trial, judgment, and relief.
  - 92. Actions against heirs or distributees.
- (B) ADVANCEMENTS.**
- 93. Nature and essentials in general.
  - 94. Constitutional and statutory provisions.

**124. DESCENT AND DISTRIBUTION****III. RIGHTS AND LIABILITIES OF HEIRS  
AND DISTRIBUTEES.(Cont'd)**

- 95. Property subject of advancement.
- 96. Purposes of advancement.
- 97. Persons between whom advancements may be made.
- 98. Intent to make advancement.
- 99. Mode and sufficiency of transfer.
- 100. Acceptance.
- 101. Change of advancement to gift.
- 102. Revocation or change of advancement to loan or debt.
- 102.5. Disposition by will of part of estate.
- 103. Effect of testamentary provisions.
- 104. Operation and effect of advancements in general.
- 105. Persons chargeable with or taking subject to advancements.
- 106. Rights and remedies of parties in general.
- 106.5. Relinquishment of share in estate.
- 107. Election between advancement and share in estate.
- 108. Bringing property into hotchpot for distribution.
- 109. — In general.
- 110. — Proceedings.
- 111. — Operation and effect.
- 112. Valuation.
- 113. Interest.
- 114. Evidence.
- 114.1. — In general.
- 115. — Presumptions and burden of proof.
- 116. — Admissibility.
- 117. — Weight and sufficiency.
- 118. Questions for jury.

**(C) DEBTS OF INTESTATE AND INCUMBRANCES  
ON PROPERTY.**

- 119. Nature and grounds of liability of heirs and distributees.
  - (1). In general.
  - (2). Acceptance or renunciation of estate.
- 120. What law governs.
- 121. Constitutional and statutory provisions.
- 122. Liabilities on receipt of personal property or distributive share.
- 122.1. — In general.
- 123. — Debts enforceable.

**III. RIGHTS AND LIABILITIES OF HEIRS  
AND DISTRIBUTEES.(Cont'd)**

- 124. — Extent of liability.
- 125. Liabilities on descent of real property.
- 125.1. — In general.
- 126. — Debts enforceable against heirs in general.
- 127. — Specialties and debts of record.
- 128. — Covenants of intestate relating to land.
- 129. — Liens and incumbrances created by intestate.
- 130. Liens for debts as against heirs.
- 131. Conveyances and incumbrances by heirs.
- 131.1. — In general.
- 132. — Effect as to liabilities of heirs.
- 133. — Rights and liabilities of purchasers in general.
- 134. — Bona fide purchasers.
- 135. Apportionment of debts.
- 136. Deductions and set-offs.
- 137. Action against heirs, distributees, or purchasers.
- 137.1. — In general.
- 138. — Nature and form of remedy.
- 139. — Rights of action.
- 140. — Conditions precedent.
- 141. — Defenses.
- 142. — Jurisdiction and venue.  
*See also LIMITATION OF ACTIONS.*
- 143. — Limitations and laches.
- 144. — Parties.
- 145. — Process and appearance.
- 146. — Pleading.
- 147. — Evidence.
- 148. — Trial.
- 149. — Judgment or decree.
- 150. — Execution and enforcement of judgment.
- 151. — Appeal and error.
- 152. Contribution.

**(D) RIGHTS AND REMEDIES OF CREDITORS  
OF HEIRS AND DISTRIBUTEES.**

- 153. Right to subject interests in estate in general.
- 154. Interests or rights which may be subject-ed.
- 155. Effect of advancement to heir or distributee.

**124. DESCENT AND DISTRIBUTION****III. RIGHTS AND LIABILITIES OF HEIRS  
AND DISTRIBUTEES.**(Cont'd)

- 156. Effect of indebtedness of heir or distributee to estate.
- 157. Actions and other proceedings by creditors.

**IV. DOWER AND CURTESY.**

- 158. In general.
- 159. What law governs.
- 160. Property subject.
- 161. — In general.
- 162. — Estates and interests subject.
- 163. — Conveyances before marriage in fraud of spouse.
- 164. Persons entitled.
- 165. Contingent or inchoate rights.
- 166. — In general.
- 167. — Value of right.
- 168. — Remedies for protection of interest.
- 169. — Curtesy initiate.
- 170. Rights and remedies of surviving spouse.
- 171. — In general.
- 172. — Proceedings to establish rights.
- 173. — Rights and liabilities as tenant or possessor.
- 174. Bar, release, or forfeiture of rights.
- 175. — In general.
- 176. — Jointures.
- 177. — Settlements and agreements.
- 178. — Conveyance or other transfer of property.
  - (1). In general.
  - (2). Assignment for benefit of creditors or in insolvency.
  - (3). Judicial sale.
  - (4). Dedication or appropriation of property to public use.
  - (5). Adverse possession.
- 179. — Mortgages and deeds of trust.
- 180. — Estoppel.
- 181. — Elopement, adultery, or other misconduct.
- 182. — Divorce.
- 183. — Restoration of rights.
- 184. Rights and remedies of creditors.

- 185. — In general.
- 186. — Priorities.

**125. DETECTIVES AND SECURITY  
GUARDS****SUBJECTS INCLUDED**

Regulation and conduct of the business of detection of crime or other wrongdoing, or watching and protecting persons or property, by private individuals or corporations

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Labor relations, industrial espionage, see LABOR AND EMPLOYMENT

Municipal police officers, see MUNICIPAL CORPORATIONS

Public officers generally, see PUBLIC EMPLOYMENT

- 1. Constitutional and statutory provisions.
- 2. Incorporation and organization of companies or associations.
- 3. Licenses and regulations.
- 4. Authority, duty, and liability of private detectives and security providers.
- 5. Compensation.
- 6. Offenses.

**126. DETINUE****SUBJECTS INCLUDED**

Actions for recovery of specific personal property wrongfully detained, or the value thereof as damages where it cannot be delivered, founded on the right of property and not merely on the right of possession

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto

By and against whom and as to what property they may be maintained

**129. DISORDERLY CONDUCT**

Procedure therein, verdict and judgment and enforcement thereof

Alternative or incidental recovery of damages

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Damages merely for injuring, taking, converting or detaining personal property, actions for, see TRESPASS, CONVERSION AND CIVIL THEFT

Possession merely, actions founded on right of, see REPLEVIN

Summary proceedings to determine and restore previous possession, see POSSESSORY WARRANT

1. Nature and scope of remedy.
2. Statutory provisions.
3. Grounds.
4. — In general.
5. — Title and right to possession of plaintiff.
6. — Taking and detention by defendant.
7. Demand.
8. Defenses.
9. Persons entitled to sue.
10. Persons liable.
11. Time to sue, and limitations.  
*See also LIMITATION OF ACTIONS.*
12. Parties.
13. Process.
14. Proceedings for taking and delivery of property.
15. Proceedings for redelivery to defendant.
16. Claims by third persons.
17. Pleading.
18. Evidence.
19. Damages.
20. Trial.
21. — In general.
22. — Questions for jury.
23. — Instructions.
24. — Verdict and findings.
25. Judgment.
26. Execution and enforcement of judgment.
28. Liabilities on bonds and recognizances.
29. — In general.
30. — Redelivery bonds and recognizances.
31. — Claimants' bonds.
32. — Actions on bonds and recognizances.

**129. DISORDERLY CONDUCT****SUBJECTS INCLUDED**

Infractions, misdemeanors and other malfeasance offensive to the private or public sense of security in person or property, or the public morals

Conduct threatening or interfering with public or private safety, commerce, or tranquility, which amounts to, gives rise to, or is evocative of an emotional or aggressive response or exchange

Disorderly persons and status offenses

Breach of the peace

Preparation for criminal acts or misconduct short of an attempt

Solicitation of criminal acts or misconduct

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Vehicular equipment regulations, see AUTOMOBILES

Abstractions invoking or applying particular constitutional provisions, see CONSTITUTIONAL LAW

Appeals, see CRIMINAL LAW

Harassment, see THREATS, STALKING, AND HARASSMENT

Stalking, see THREATS, STALKING, AND HARASSMENT

Intoxicating liquors, see ALCOHOLIC BEVERAGES

Sexual solicitation for hire, crime of, see PROSTITUTION

Electronic communications offenses, see TELECOMMUNICATIONS

Loitering, crime of, see VAGRANCY

100. In general.

101. Constitutional and statutory provisions.

102. Nature and elements of offenses in general.

103. — In general.

104. — Breach of the peace.

105. Necessity of disturbance; tendency or imminence.

**129. DISORDERLY CONDUCT**

106. Requisites of annoyance or disturbance in general.
107. Location or proximity; public place.
108. Congregating and obstructing in general.
109. Language, speech, and threats in general.
110. Noise in general.
111. Parades, demonstrations, and picketing in general.
112. Signs and displays; gestures.
113. Leafleting and pamphlets; mailings.
114. Religious activities in general.
115. Fortune telling and palmistry.
116. Disruption of functions and proceedings.
117. Criminal preparation and status.
118. — In general.
119. — Consorting and associating; gangs.
120. — Disguise or outfit; body armor.
121. — Instruments of crime.
122. — Prowling in general.
123. Privacy, surveillance, and eavesdropping.
124. Following, approaching, or accosting.
125. Solicitation of crime or misconduct.
126. Sexual and indecent activities.
127. Provocation in general; fighting words.
128. Threatening and tumultuous conduct; fighting.
129. Challenges and resistance to authority.
130. — In general.
131. — Verbal resistance in general.
132. — Disobedience in general; failure to disperse.
133. — Provocation in general.
134. — Threatening and tumultuous conduct; fighting.
135. — Motor vehicle stops.
136. Hazardous and offensive conduct and conditions.
137. Weapons and explosives.
138. Modes of transportation and related facilities.
139. Property violations and disputes.
140. Other particular conduct.
141. Defenses.
142. Prosecution in general.
143. Indictment, information, and complaint.
144. Evidence.
145. — In general.
146. — Burden, presumptions, and inferences.

147. — Admissibility.
148. — Weight and sufficiency.
149. Questions of fact or law.
150. Instructions.
151. Sentence and punishment.

**130. DISORDERLY HOUSE****SUBJECTS INCLUDED**

Owning, letting, keeping or frequenting a building or portion of a building used as a bawdy house, or for any other lewd or indecent purpose, or as a gaming house, or place for use of narcotics, or other place of public resort by which the peace, comfort or decency of the neighborhood is habitually disturbed

Keeping a house, the conduct of the inmates of which constitutes a public nuisance

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Intoxicating liquors, keeping places for illegal sale, etc., see ALCOHOLIC BEVERAGES

Nuisances in general, see NUISANCE

1. Nature and elements of offenses.
2. — In general.
3. — House or other building or place.
4. — Conduct or use of house.
5. — Keeping of house.
6. — Owning or letting or permitting use of house.
7. — Frequenting or living in disorderly house.
8. Defenses.
9. Persons liable.
10. Penalties and actions therefor.
11. Indictment or information.
- 11.1. — In general.
12. — Requisites and sufficiency.
13. — Issues, proof, and variance.

**131. DISTRICT AND PROSECUTING ATTORNEYS**

- 14. Evidence.
- 14.1. — In general.
- 15. — Presumptions and burden of proof.
- 16. — Admissibility.
- 17. — Weight and sufficiency.
- 18. Trial.
- 18.1. — In general.
- 19. — Questions for jury.
- 20. — Instructions.
- 21. — Verdict.
- 24. Sentence and punishment.

**131. DISTRICT AND PROSECUTING ATTORNEYS****SUBJECTS INCLUDED**

Public prosecutors for particular districts or counties in civil as well as criminal cases

Eligibility for the office, appointment, qualification and tenure of office

Rights, powers, duties and liabilities of public prosecutors and their assistants and associate counsel in general

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Chief law officer in the government of the United States and of each state, and his deputies, assistants and substitutes, see ATTORNEY GENERAL

City attorneys and counsel of municipal corporations, see MUNICIPAL CORPORATIONS

Election of district or county attorneys, see ELECTION LAW

Particular proceedings by prosecuting attorneys, see GRAND JURY, INDICTMENTS AND CHARGING INSTRUMENTS, and other specific topics

- 1. Nature and functions of office.
- 2. Appointment or election, and qualification and tenure.
  - (1). In general.
  - (2). Appointment to fill vacancy.
  - (3). Eligibility.

- (4). Qualification.
- (5). Tenure and removal.
- (6). Effect of changing district.
- 3. Deputies, assistants, and substitutes.
  - (5). In general.
  - (1). Appointment.
  - (2). Eligibility.
  - (3). Qualification.
  - (4). Powers.
  - (5). Compensation and fees.
- 4. Compensation and fees.
- 5. — In general.
  - (5). In general.
  - (1). Fees and costs.
  - (2). Commissions.
  - (3). Expenses.
  - (4). Salary, extra allowances, and deductions.
  - (5). Liability of state.
  - (6). Allowance and payment or collection.
  - (7). Conflicting claims, and deductions from compensation.
- 6. — United States Attorneys.
  - (1). In general.
  - (2). Mileage and expenses.
  - (3). Allowance and collection.
- 7. Representation of state or county in general.
  - (1). In general.
  - (2). Contracts and expenditures on behalf of county.
- 8. Powers and proceedings in general.
  - (1). In general.
  - (2). Statutory and constitutional provisions.
  - (3). Duties.
  - (4). Jurisdiction and authority to act.
  - (5). Discretion in general.
  - (6). Charging discretion.
  - (7). Pre-indictment investigations and subpoenas.
  - (8). Agreements with suspects, convicts, prisoners; effect of such agreements.
  - (9). Ethical standards and conflicts of interest.
  - (10). Authority of victims and private citizens to bring criminal charges.



**131. DISTRICT AND PROSECUTING ATTORNEYS**

9. Prosecution or defense of civil actions.
10. Liabilities for official acts, negligence, or misconduct.
11. Criminal responsibility.
12. Liabilities on bonds.

**132. DISTRICT OF COLUMBIA****SUBJECTS INCLUDED**

The district ceded to the United States as the seat of government

The cessions and their effect in general

Status of the District as a body politic and corporate

Establishment and control of the capitol and other public buildings and public reservations

Power of the national government over the District

Local laws and laws of the United States applicable thereto

Establishment and organization of the local government, appointment of officers thereof, and rights, powers, proceedings and liabilities of such government, its officers and agents

Public improvements and assessments therefor

Property, contracts, indebtedness, bonds and other securities of the District

Taxation by the District and its revenue

Actions by or against the District

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Citizens in the District and their rights in general, see ALIENS, IMMIGRATION, AND CITIZENSHIP, CONSTITUTIONAL LAW, CIVIL RIGHTS

Judges and other officers thereof, see JUDGES, CLERKS OF COURTS and other specific topics

Zoning, see ZONING AND PLANNING

1. Operation and effect of cessions.

2. Status and governmental powers and functions in general.
3. Legislative power of Congress.
4. Application and operation of acts of Congress.
5. Local law.
6. Local government.
7. Officers, agents, and employees.
8. Property of District.
9. Contracts in general.
10. District expenses and charges, and statutory liabilities.
11. Public improvements.
12. — In general.
13. — Preliminary proceedings.
14. — Contracts.
15. — Damages.
16. — Assessments.
17. — Enforcement of assessments.
18. Police power and regulations.
19. — In general.
20. — Violations and enforcement of regulations.
21. Use and regulation of public places, property, and works.
- 21.1. — In general.
22. — Streets and public ways.
- 22.5. — Sewers, drains, and water courses.
23. — Public buildings, parks, and other public places and property.
24. Torts.
- 24.1. — In general.
25. — Exercise of governmental and corporate powers in general.
26. — Acts or omissions of officers or agents.
27. — Defects or obstructions in streets and other public ways.
28. — Defects or obstructions in sewers, drains, and water courses.
29. — Condition or use of public buildings and other property.
30. Power to incur indebtedness or make expenditures.
31. Debts in general, appropriations, and payment.
32. Bonds and other securities.
33. Taxation.
- (.5). In general.

**133. DISTURBANCE OF PUBLIC ASSEMBLAGE**

- (1). Nature and extent of power in general.
- (2). Constitutional requirements and restrictions.
- (3). Liability of persons and property in general.
- (4). Poll taxes.
- (5). Employment taxes.
- (6). Corporations and corporate stock and property in general.
- (7). Building and loan associations.
- (8). Banks and loan, trust and investment companies.
- (9). Telegraph, telephone, and radio companies.
- (10). Income taxes.
- (10.1). — In general.
- (11). — Domicile of taxpayer.
- (12). — Source of income.
- (13). — Evasion of tax.
- (14). Exemptions.
- (15). Levy of taxes.
- (15.1). — In general.
- (16). — Rate of taxation.
- (17). Assessment of taxes.
- (17.1). — In general.
- (18). — Statutory provisions.
- (19). — Designation of persons or corporations.
- (20). — List or statement by taxpayer.
- (21). — Valuation.
- (22). — Additional assessments and omitted property.
- (23). — Injunction.
- (24). — Income taxes.
- (25). Review, correction or setting aside.
- (26). Payment and refunding or recovery of taxes paid.
- (27). Collection and enforcement.
- (27.1). — In general.
- (28). — Distress.
- (29). — Sale of land.
- (30). — Injunction against collection or sale of land.
- (31). Redemption from tax sale.
- (32). Tax titles.
- (33). Forfeitures and penalties.
- (34). Disposition of taxes collected.

- (35). Estate and inheritance taxes.
- (35.1). — In general.
- (36). — Statutory provisions.
- (37). — Domicile of decedent.
- (38). — Transfers subject to tax.
- (39). — Assessment.
- (40). — Review.

34. Rights and remedies of taxpayers.

35. Claims against District.

36. Actions.

37. Courts of District.

*For matters not peculiar to local District of Columbia courts, particularly in cases arising after the District of Columbia Court Reform and Criminal Procedure Act of 1970, see APPEAL AND ERROR, COURTS, and other state procedural topics. For the United States District Court for the District of Columbia, see topics covering other federal district courts, particularly FEDERAL COURTS for establishment, organization, and jurisdiction and FEDERAL CIVIL PROCEDURE for civil procedure.*

38. — In general; establishment and organization.

*Establishment and organization of United States District Court, see FEDERAL COURTS ¶2004.*

39. — Jurisdiction, powers, and authority.

*Exclusive, concurrent, and conflicting jurisdiction, see COURTS ¶550.*

40. — Procedure.

41. — Appellate jurisdiction and procedure.

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**133. DISTURBANCE OF PUBLIC ASSEMBLAGE**

**SUBJECTS INCLUDED**

Acts or conduct interfering with the peace or order of a lawful assemblage of persons for religious or other purposes

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts or conduct as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Disorderly conduct generally, and breach of the peace, see DISORDERLY CONDUCT

Fighting and rioting in public, see RIOT and CRIMINAL LAW ¶45.15

**133. DISTURBANCE OF PUBLIC ASSEMBLAGE**

1. Nature and elements of offenses.
2. Statutory provisions.
3. Defenses.
4. Persons liable.
5. Indictment or information.
- 5.1. — In general.
6. — Requisites and sufficiency.
7. — Issues, proof, and variance.
8. Evidence.
- 8.1. — In general.
9. — Presumptions and burden of proof.
10. — Admissibility.
11. — Weight and sufficiency.
12. Trial.
13. — In general.
14. — Questions for jury.
15. — Instructions.
17. Prevention or suppression of disturbance, and expulsion of offenders.
18. Civil liability.
19. Sentence and punishment.

**134. DIVORCE****SUBJECTS INCLUDED**

Dissolution of the relation of a valid marriage, total or partial, by legislative or judicial action

Judicial separation of husband and wife

Nature and scope of the remedy in general

Grounds of actions for divorce or separation and defenses thereto

Jurisdiction to grant divorces or separations, and proceedings therefor

Incidental relief as to alimony and disposition of property

Judgments or decrees and operation and effect thereof

Review of proceedings and costs in actions for divorce or separation

Status, rights and liabilities of divorced persons

Foreign divorces

Separation agreements

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Annulment of marriage, see MARRIAGE AND COHABITATION

Custody and support of children, see CHILD CUSTODY or CHILD SUPPORT

Particular rights and estates in property, effect of divorce, see HOMESTEAD, INSURANCE, and other specific topics

Separate maintenance without divorce, see MARRIAGE AND COHABITATION

I. NATURE AND FORM OF REMEDY, ¶1–11.5.

II. GROUNDS, ¶12–38.

III. DEFENSES, ¶38.5–56.

IV. PROCEEDINGS, ¶57–499.

(A) JURISDICTION, ¶57–65.

(B) VENUE, ¶66.

(C) TIME FOR PROCEEDING, ¶66.5–69.

(D) PARTIES, ¶70–75.

(E) PROCESS OR NOTICE, ¶76–80.

(F) APPEARANCE, ¶81.

(G) ABATEMENT AND REVIVAL, ¶82–83.

(H) INCIDENTAL PROCEEDINGS, ¶84–87.5.

(I) PLEADING, ¶88–109.

(J) EVIDENCE, ¶109.1–137.

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2. ADMISSIBILITY, ¶111–123.

3. WEIGHT AND SUFFICIENCY, ¶124–136.

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(K) DISMISSAL, ¶138–139.5.

(L) TRIAL OR HEARING, ¶140–150.2.

(M) NEW TRIAL, ¶151.

(N) JUDGMENT OR DECREE, ¶152–174.

(O) APPEAL, ¶175–499.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY, ¶500–1349.

(A) IN GENERAL, ¶500–519.

(B) PRELIMINARY MATTERS, ¶520–557.

1. IN GENERAL, ¶520–529.

2. SPOUSAL SUPPORT PENDING PROCEEDINGS, ¶530–557.

(C) SPOUSAL SUPPORT, ¶558–649.

(D) ALLOCATION OF PROPERTY AND LIABILITIES; EQUITABLE DISTRIBUTION, ¶650–899.

**134. DIVORCE****V. SPOUSAL SUPPORT, ALLOWANCES,  
AND DISPOSITION OF PROPERTY  
—Cont'd****(D) ALLOCATION OF PROPERTY  
AND LIABILITIES; EQUITABLE  
DISTRIBUTION—Cont'd**

1. IN GENERAL, ¶650–670.
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3. PROPORTION OR SHARE GIVEN ON DIVISION, ¶725–759.
4. VALUATION OF PROPERTY OR INTEREST IN GENERAL, ¶760–779.
5. VALUATION, DIVISION OR DISTRIBUTION OF PARTICULAR PROPERTY OR INTERESTS, ¶780–819.
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7. DEBTS AND LIABILITIES IN GENERAL, ¶830–849.
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AND STIPULATIONS, ¶900–999.****(F) ENFORCEMENT OF JUDGMENT  
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AND RIGHTS OF DIVORCED PERSONS, ¶1350–1399.****VII. FOREIGN DIVORCES, ¶1400–1476.****I. NATURE AND FORM OF REMEDY.**

1. Origin and nature of remedy in general.
2. What law governs.
3. Adoption of ecclesiastical law as part of common law.
4. Constitutional and statutory provisions.
5. Legislative divorces.
6. Scope of judicial remedies in general.
- 6.5. Mode and forms of procedure in general.
7. Remedies in personam and in rem.
8. Joinder of causes and proceedings.
9. Cross-action or counterclaim for affirmative relief.
10. Persons entitled to sue.

**I. NATURE AND FORM OF REMEDY.(Cont'd)**

11. Interest of state or public.
- 11.5. Stipulations and agreements.

**II. GROUNDS.**

12. Causes for divorce in general.
13. Statutory provisions.
14. Grounds existing at time of marriage.
15. — In general.
16. — Physical incapacity or condition.
17. — Mental incapacity.
18. — Fraud or duress in procuring marriage.
- 18.5. — Illegality of marriage.
19. Personal infirmities and conditions arising after marriage.
- 19.1. — In general.
20. — Physical incapacity.
21. — Contagious, loathsome, or incurable disease.
22. — Habitual drunkenness.
23. — Insanity or other mental incompetency.
24. — Conviction and imprisonment for crime.
25. Offenses against conjugal relation in general.
26. Adultery.
27. Cruelty.
  - (.5). In general.
  - (1). Elements of cruelty in general.
  - (2). Continuance or repetition of acts.
  - (3). Necessity of actual physical violence, danger to health, or fear thereof.
  - (4). Necessity of acts overcoming power of self-protection.
  - (5). Degree of refinement of spouses or station in life.
  - (6). Bodily acts or violent and threatening conduct.
  - (7). Harsh or humiliating language or demeanor.
  - (8). False charges of conjugal misconduct.
  - (8.1). — In general.
  - (9). — False charges in pleading.
  - (10). Conduct imposing conditions of hardship or privation.
  - (11). Sexual excesses.

**134. DIVORCE****II. GROUNDS.(Cont'd)**

- (12). Denial of conjugal rights.
- (13). Communication or being afflicted with disease.
- (14). Absence or desertion.
- (15). Habitual drunkenness or use of opiates or narcotics as cruelty.
- (16). Acts of bestiality.
- (17). Permitting abuse or indignities by inmates of household.
- (18). Acts, declarations, and conduct conjunctively constituting cruelty.
- 28. Conduct rendering cohabitation unsafe.
- 29. Indignities.
  - (1). In general.
  - (2). Manifestations of settled hate or estrangement.
  - (3). Course of conduct or repetition.
  - (4). Conduct making condition intolerable or life burdensome.
  - (5). Particular conduct.
- 30. Public defamation.
- 31. Failure to support.
- 32. Neglect of duty.
- 33. Violent and ungovernable temper.
- 34. Inability to live together.
- 35. Renunciation of conjugal relation.
- 36. Voluntary separation.
- 37. Desertion or absence.
  - (.5). In general.
  - (1). Definition and elements of statutory grounds.
    - (1.1). — In general.
    - (2). — Cessation of cohabitation.
    - (3). — Intent to permanently separate.
    - (4). — Malice.
    - (5). — Duration and continuity of separation.
    - (6). — Time of inception of cause.
    - (7). — Absence of consent or acquiescence.
    - (8). — Duty to seek renewal of cohabitation.
    - (9). — Legal process to fix character of abandonment.
    - (10). — Withdrawal of support.
    - (11). — Absence from state.
    - (12). Facts constituting desertion.

**II. GROUNDS.(Cont'd)**

- (12.1). — In general.
- (13). — Absence with or without neglect.
- (14). — Nonsupport.
- (15). — Obstinate, willful, or causeless separation.
- (16). — Separation by necessity or at instance of libellant.
- (17). — Separation pending institution and determination of suit for divorce or separate maintenance.
- (18). — Imprisonment or involuntary absence.
- (19). — Wrongfully or causelessly prolonging separation not originally cause for divorce.
- (20). — Refusal of conjugal rights or abstinence from cohabitation.
- (21). — Refusal to follow husband's change of domicile.
- (22). — Misconduct justifying or excusing separation of other party.
- (23). — Separation because of husband's inability to support wife.
- 38. Causes deemed by court sufficient.

**III. DEFENSES.**

- 38.5. In general.
- 39. Nonexistence or invalidity of marriage.
- 40. Agreements for separation.
- 41. Mistake of law.
- 42. Mistake of fact.
- 43. Insanity.
- 44. Drunkenness.
- 45. Connivance.
- 46. Provocation.
- 47. Condonation.
- 48. — In general.
- 49. — Acts constituting condonation.
  - (1). In general.
  - (2). Continuance of cohabitation.
  - (3). Cohabitation pending divorce suit.
  - (4). Cohabitation after knowledge of offense.

**134. DIVORCE****III. DEFENSES.**(Cont'd)

- (5). Occasional visits or sexual intercourse without renewal of cohabitation.
- (6). Overtures for reconciliation and renewed cohabitation.
- (7). Promise of remission and forgiveness.
- 50. — Operation and effect.
- 51. — Revival of offenses condoned.
- 52. Recrimination.
- 53. — In general.
- 54. — Grounds.
- 55. — Operation and effect.
- 56. Collusion.

**IV. PROCEEDINGS.****(A) JURISDICTION.**

- 57. Courts invested with jurisdiction.
- 58. Jurisdiction of cause of action.
- 59. — In general.
- 60. — Place of marriage.
- 61. — Place of occurrence of cause for divorce.
- 62. — Domicile or residence of parties.
  - (1). In general.
  - (2). Domicile of plaintiff.
  - (3). Domicile or residence of opposing or adverse party.
  - (4). Domicile at time of suit or time of delictum.
  - (5). Jurisdiction of person of nonresident or actual notice of suit.
  - (6). Facts constituting jurisdictional domicile or residence.
- 63. — Separate domicile.
- 64. — Acquisition of domicile for purpose of divorce.
- 65. Jurisdiction of the person.

**(B) VENUE.**

- 66. In general.

**(C) TIME FOR PROCEEDING.**

- 66.5. Time to sue.
- 67. Application of general statutes of limitation.
- See also LIMITATION OF ACTIONS.*
- 68. Special limitations.

*See also LIMITATION OF ACTIONS.*

- 69. Laches.

**(D) PARTIES.**

- 70. In general.
- 71. Plaintiff.
- 72. Defendants.
- 73. Intervention.
- 74. Defense on behalf of state or public.

**(E) PROCESS OR NOTICE.**

- 76. In general.
- 77. Personal service.
- 78. Substituted service.
- 79. Service by publication.
- 80. Return and proof of service.

**(F) APPEARANCE.**

- 81. In general.

**(G) ABATEMENT AND REVIVAL.**

- 82. Pendency of other action.
- 83. Abatement on death of party.

**(H) INCIDENTAL PROCEEDINGS.**

- 84. Arrest or ne exeat.
- 85. Discovery.
- 86. Physical or mental examination.
- 87. Injunction against interference with person or property.
- 87.5. Conciliation proceedings.

**(I) PLEADING.**

- 88. Mode and form in general.
- 89. Bill, libel, complaint, or petition.
- 89.1. — In general.
- 90. — Form and requisites in general.
- 91. — Residence of parties.
- 92. — Marriage.
- 93. — Grounds for divorce.
  - (1). In general.
  - (2). Adultery.
  - (3). Cruelty and ill treatment, and indignities.
  - (4). Desertion, absence, abandonment, or neglect, and nonsupport.
- 95. — Prayer for relief.
- 96. Answer.
- 96.1. — In general.
- 97. — Form and requisites in general.

**134. DIVORCE****IV. PROCEEDINGS.(Cont'd)**

- 98. — Denials and admissions.
- 99. — Affirmative defenses.
- 101. Counterclaim or cross-bill, libel, complaint, or petition.
- 102. Replication or reply.
- 103. Demurrer.
- 104. Amended and supplemental pleadings.
- 105. Verification of pleadings.
- 106. Affidavits accompanying pleadings.
- 107. Bill of particulars.
- 108. Issues, proof, and variance.

**(J) EVIDENCE.****1. PRESUMPTIONS AND BURDEN OF PROOF.**

- 109.1. In general.
- 109.2. Residence of parties.
- 109.3. Grounds for divorce.
  - (1). In general.
  - (2). Desertion.
- 109.5. Defenses.

**2. ADMISSIBILITY.**

- 111. In general.
- 112. Residence of parties.
- 113. Marriage.
- 114. Physical or mental condition.
- 115. Adultery.
- 116. Cruelty or other ill treatment.
- 117. Failure to support or other neglect.
- 118. Temper, acts, or conduct incompatible with conjugal relation.
- 119. Desertion.
- 120. Connivance.
- 121. Condonation.
- 122. Collusion.

**3. WEIGHT AND SUFFICIENCY.**

- 124. In general.
- 124.1. Degree of proof.
- 124.2. Particular facts or issues.
- 124.3. Domicile or residence.
- 124.4. Grounds for divorce; defenses in general.
- 124.5. Voluntary separation.
- 124.6. Limited divorce or separation.
- 125. Admissions and confessions.
- 126. Grounds existing at time of marriage.
- 127. Testimony of parties, and corroboration.

**IV. PROCEEDINGS.(Cont'd)**

- (1). In general.
- (2). Failure of opposite party to deny facts testified to.
- (3). Necessity of corroboration.
- (4). Sufficiency of corroboration.
- 128. Physical or mental condition.
- 129. Adultery.
  - (5). In general.
  - (1). Degree of proof.
  - (2). Certainty and definiteness of evidence as to time and place.
  - (3). Identification of defendant.
  - (4). Number of witnesses.
  - (5). Credibility of witnesses testifying to acts of adultery.
  - (6). Testimony of paramour and corroboration thereof.
  - (7). Testimony of prostitutes, detectives, or persons of low character.
  - (8). Testimony of young children.
  - (9). Circumstantial evidence.
  - (10). Interpretation in favor of innocence.
  - (11). Circumstances coupled with admissions or confessions.
  - (12). Suspicious or compromising circumstances or situations.
  - (13). Resorting to houses of ill fame and conduct there.
  - (14). Occupancy of same room or bed with paramour.
  - (15). Acts or expressions of affection for paramour.
  - (16). Suspicious and incriminating circumstances conjunctively proving offense.
  - (17). Recriminating charges.
- 130. Cruelty or other ill treatment.
- 131. Failure to support or other neglect.
- 132. Temper, acts, or conduct incompatible with conjugal relation.
  - (1). In general.
  - (2). Indignities.
  - (2.1). — In general.
  - (3). — Evidence sufficient to warrant divorce.
  - (4). — Evidence insufficient to warrant divorce.

**134. DIVORCE****IV. PROCEEDINGS.(Cont'd)**

- (5). Degree of proof.
- (6). Particular evidence or conduct.
- (7). Innocence, equal fault, or provocation.
- 133. Desertion or absence.
  - (1). In general.
  - (2). Fact of desertion.
  - (3). — In general.
  - (4). — Evidence sufficient to warrant divorce.
  - (5). — Constructive desertion.
  - (6). — Particular evidence or conduct.
  - (7). — Period of desertion.
  - (8). — Absence of consent or encouragement; offer of reconciliation.
  - (9). Number of witnesses.
  - (10). Intention or fault as between parties.
- 134. Connivance.
- 135. Condonation.
- 136. Collusion.

**4. TAKING AND FILING PROOFS.**

- 137. Taking and filing proofs before hearing.

**(K) DISMISSAL.**

- 138. Dismissal.
- 138.1. — In general.
- 139. — Voluntary.
- 139.5. — Involuntary.

**(L) TRIAL OR HEARING.**

- 140. Scope of inquiry and powers of court.
- 141. — In general.
- 142. — On default of defendant.
- 143. Reference.
  - (.5). In general.
    - (1). Nature, grounds, and order of reference.
    - (2). Referees and proceedings in general.
    - (3). Notice of hearing.
- 144. Submission of issues to jury.
- 145. Proceedings preliminary to trial or hearing.
- 146. Mode and conduct of trial in general.

**IV. PROCEEDINGS.(Cont'd)**

- 147. Questions for court and jury.
- 148. Instructions.
- 149. Verdict and findings by jury.
- 150. Decision and findings by court.
- 150.1. Decision and findings by referee or master.
  - (1). In general.
  - (2). Operation and effect.
  - (3). Objections and exceptions, and hearing thereon.
  - (4). Recommittal.

**(M) NEW TRIAL.**

- 151. In general.

**(N) JUDGMENT OR DECREE.**

- 152. Nature and essentials in general.
- 153. Scope and extent of relief.
- 154. — In general.
- 155. — Limited divorce or separation.
- 156. — Decree nisi.
- 157. — Absolute divorce.
- 158. — Prohibition or leave to marry.
- 159. By default or pro confesso.
  - 159.1. — In general.
- 160. — Requisites and validity.
- 161. — Opening or setting aside.
- 162. On trial of issues.
- 163. Amendment or correction.
- 164. Modification.
- 165. Opening or vacating.
  - (.5). In general.
    - (1). Power and authority.
    - (2). Persons entitled and right to relief.
    - (3). Grounds; defenses in general.
    - (4). Laches and limitations.
    - (5). Notice.
    - (5.5). Pleading and evidence.
    - (6). Effect of order or decree.
    - (7). Amendment of decree on consent of parties.
- 166. Bill of review.
- 167. Actions to vacate or set aside.
- 168. Collateral attack.
- 169. Construction and operation in general.
- 170. Time of taking effect.



**134. DIVORCE****IV. PROCEEDINGS.(Cont'd)**

- 171. Merger and bar of causes of action and defenses.
- 172. Conclusiveness of adjudication.
- 174. Evidence of fact of divorce.

**(O) APPEAL.**

- 175. Nature and form of remedy.
- 176. Appellate jurisdiction.
- 177. Decisions reviewable.
- 178. Right of review.
- 179. Presentation and reservation in lower court of grounds of review.
- 180. Parties.
- 181. Taking and perfecting appeal.
- 182. Effect of appeal.
- 183. Record.
- 183.5. Hearing.
- 184. Review.
  - (.5). In general.
  - (1). Scope and extent in general.
  - (2). Parties entitled to allege error.
  - (3). Amendments, additional proofs, and trial of cause anew.
  - (4). Presumptions.
  - (5). Discretion of court.
  - (6). Questions of fact, verdicts, and findings.
  - (6.1). — In general.
  - (7). — Credibility of witnesses.
  - (8). — Dismissal, nonsuit, or direction of verdict.
  - (9). — Verdicts.
  - (10). — Findings of court or chancellor.
  - (11). — Findings of referee.
  - (12). Harmless error.
- 185. Determination and disposition of cause.
- 186. — In general.
- 187. — Effect of marriage of party.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.****(A) IN GENERAL.**

- 500. In general.
- 501. Nature and form of remedies in general.
- 502. What law governs.
- 503. — In general.
- 504. — Spousal support.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- 505. — Property distribution.
- 506. Constitutional and statutory provisions.
- 507. — In general.
- 508. — Purpose.
- 509. — Validity.
  - (1). In general.
  - (2). Spousal support.
  - (3). Property distribution.
  - (4). Counsel fees, costs, and expenses.
- 510. — Retroactive operation.
  - (1). In general.
  - (2). Spousal support.
  - (3). Property distribution.
  - (4). Counsel fees, costs, and expenses.
- 511. Power or jurisdiction to make allowance or award in general.
- 512. Factors and grounds impacting awards and decisions in general.
- 513. Discretion in determining financial obligations.
- 514. Sufficiency of process, service, or appearance in general.

**(B) PRELIMINARY MATTERS.****1. IN GENERAL.**

- 520. In general.
- 521. Attachment against property of defendant before award.
- 522. Injunction against disposition of property before award.
- 523. Receiver before award.

**2. SPOUSAL SUPPORT PENDING PROCEEDINGS.**

- 530. In general.
- 531. Condition of cause.
- 532. Allowance pending appeal.
- 533. Authority and discretion of court.
- 534. Grounds, factors, and considerations.
- 535. Defenses and objections.
- 536. Application and proceedings thereon.
- 537. — In general.
- 538. — Form, requisites, and sufficiency of application.
- 539. — Notice.
- 540. — Affidavits, showing, or evidence.
  - (1). In general.

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**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.**(Cont'd)

- (2). Presumptions and burden of proof.
- (3). Weight and sufficiency.
- 541. — Hearing and determination in general.
- 542. — Time for hearing or determination.
- 543. Amount.
- 544. Order.
- 545. — In general.
- 546. — Amendment.
- 547. — Modification of order.
- 548. — Vacating or setting aside order.
- 549. — Operation and effect in general.
- 550. — Commencement.
- 551. — Termination.
- 552. Payment.

**(C) SPOUSAL SUPPORT.**

- 558. In general.
- 559. Nature and purpose of spousal support; property award distinguished.
- 560. Statutory basis for award; necessity of statute.
- 561. On limited divorce or separation.
- 562. On absolute divorce.
- 563. When divorce is not granted.
- 564. After judgment or decree of divorce.
- 565. Authority and discretion of trial court.
  - (1). In general.
  - (2). Discretion as to amount.
  - (3). Abuse of discretion in general.
- 566. Mandatory nature.
- 567. Grounds and defenses in determining existence and amount of obligation.
- 568. — In general.
- 569. — Conduct of parties; cause of divorce.
- 570. — Contributions.
- 571. — Sexual behavior, orientation, or preference.
- 572. — Relative needs and abilities to pay in general.
- 573. — Standard of living and station in life.
- 574. — Separate wealth, estate and resources.
- 575. — Effect of property distribution.
- 576. — Earnings; earning capacity.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.**(Cont'd)

- 577. — Pension, retirement, or government benefits or compensation.
- 578. — Expenses and debts in general.
- 579. — Tax considerations in general.
- 580. — Child custody and support.
- 581. — Residence.
- 582. — Length of marriage.
- 583. — Age of parties.
- 584. — Health issues.
- 585. — Double-counting, “double-dipping,” dual use.
- 586. — Multiple factors.
- 587. Actions and proceedings in general.  
*Discovery issues in divorce generally, see ¶85.*
- 588. — In general.
- 589. — Time for proceedings.
- 590. — Jurisdiction and venue.
- 591. — Parties.
- 592. — Notice and process.
- 593. — Pleading.
- 594. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Weight and sufficiency.
  - (4). — In general.
  - (5). — Needs.
  - (6). — Ability to pay in general.
  - (7). — Income and assets.
- 595. — Trial or hearing in general.  
*New trial issues, see ¶151.*
- 596. — Questions of law or fact.
- 597. — Determination and findings.
  - (1). In general.
  - (2). Needs.
  - (3). Ability to pay in general.
  - (4). Income and assets.
- 598. Award in general; calculation.
  - (1). In general.
  - (2). Inadequacy or excessiveness of amount.
- 599. Credits and offsets.
- 600. Automatic or built-in adjustments; escalator clauses.
- 601. Award of gross sum.
  - (1). In general.
  - (2). Grounds, factors, and defenses in general.

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- (3). Particular cases.
- 602. Award of specific property as alimony.
- 603. Insurance.  
*Insurance for benefit of children, see CHILD SUPPORT.*
- 604. Reservation of jurisdiction.
- 605. Extent of time of payments.
- 606. — In general.
- 607. — Commencement of obligation to pay.
- 608. — Rehabilitative awards; awards until self-supporting.
- 609. — Conditions terminating or suspending obligation.
  - (1). In general.
  - (2). Sexual relations, cohabitation, or remarriage.
  - (3). Death.
- 610. — Proceedings for termination of alimony or support.
- 611. Definiteness of award.
- 612. Judgment or decree.
- 613. — In general.  
*Validity of provision as to modifiability, see §624.*
- 614. — Operation and effect.
- 615. Security for payment.
- 616. Other particular conditions.
- 617. Amendment of decree.
- 618. Modification of judgment or decree.
- 619. — In general.
- 620. — Nature and purpose.
- 621. — Modification proceeding not intended as collateral attack.
- 622. — Power and authority of court.
- 623. — Necessity that power to modify be reserved in initial decree.
- 624. — Effect of provision in initial decree as to modifiability thereof.
- 625. — Effect of initial decree silent as to spousal support.
- 626. — Discretion of trial court.
- 627. — Grounds, factors, and defenses.
  - (1). In general.
  - (2). Factors considered in general.
  - (3). Change in circumstances in general; materiality.
  - (4). Expenses in general.
  - (5). Health issues.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- (6). Employment and wage or salary issues.
- (7). Obligor rehabilitation or capacity of self-support.
- (8). Military service.
- (9). Pension, retirement, or government benefits or compensation.
- (10). Separate wealth, estate and resources in general.
- (11). Inheritance, gifts, lottery winnings, or other increase in wealth.
- (12). Decrease in wealth; bankruptcy.
- (13). Remarriage, cohabitation, sexual activity, or birth of new children.
- (14). Compliance or noncompliance with payment order by obligor; arrears.
- (15). Multiple grounds or defenses.
- 628. — Modification of decree incorporating or based on separation agreement.
  - (1). In general.
  - (2). Power to modify decree.
- 629. — Lump sum payment; alimony in gross.
- 630. — Procedure in general.
- 631. — Petition, application, notice, and pleading.
- 632. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Weight and sufficiency.
- 633. — Determination and findings.
- 634. — Amount.
- 635. — Judgment.
  - (1). In general.
  - (2). Scope of relief granted in general.
  - (3). Retroactivity.
  - (4). Operation and effect.
- 636. Vacating or setting aside judgment or decree.
  - (1). In general.
  - (2). Grounds.
  - (3). Procedure.
- 637. Payment.

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638. Assignability of spousal support or bond therefor.

**(D) ALLOCATION OF PROPERTY AND LIABILITIES; EQUITABLE DISTRIBUTION.****1. IN GENERAL.**

650. In general.  
 651. Nature and purpose.  
 652. Power and authority of court.  
 653. Discretion of court in general.

**2. PROPERTY SUBJECT TO DISTRIBUTION OR DIVISION.**

671. In general.  
 672. Time of acquisition of property in general.  
 673. — In general.  
 674. — Property acquired before marriage.  
 675. — Property acquired after divorce or dissolution.  
 676. — Interests expected in the future.  
 677. Jointly owned property.  
 678. Community property in general.  
       *Community or separate character and community property reimbursement issues, see MARRIAGE AND COHABITATION.*  
 679. Separate or marital property in general.  
 680. — In general.  
 681. — What is marital property in general.  
 682. — Time of acquisition.  
 683. — Commingling, tracing, and transmutation.  
 684. — Contributions and increases to separate property in general.  
 685. — Enhancements and proceeds of marital property in general.  
 687. — Distribution of separate property in general.  
 688. Particular interests as separate or marital property.  
 689. — In general.  
 690. — Enhancements and proceeds of property in general.  
 691. — Real estate and proceeds thereof in general.  
 692. — Farms and ranches.  
 693. — Marital residence or homestead.  
 694. — Personal and household goods.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

695. — Vehicles, vessels, and other forms of transport.  
 696. — Licenses, education and degrees; compensating payments.  
 697. — Income and refunds.  
 698. — Gaming and lottery proceeds.  
 699. — Accounts and deposits.  
 700. — Trusts and annuities.  
 701. — Tax interests and benefits.  
 702. — Possessory interests and conversion rights; motor vehicle leases.  
 703. — Businesses and associated assets in general.  
 704. — Receivables.  
 705. — Stocks, bonds, and other investments.  
 706. — Good will.  
 707. — Machinery and equipment in general; tools.  
 708. — Farm implements and equipment.  
 709. — Crops and livestock.  
 710. — Insurance policies and proceeds in general.  
 711. — Employment benefits in general.  
 712. — Retirement or pension rights.  
 713. — Military retirement, pension or disability rights.  
 714. — Disability benefits and workers' compensation.  
 715. — Rights as creditor; notes.  
 716. — Choses and expectancies in general.  
 717. — Money judgments and recoveries.  
 718. — Gifts and inheritance.

**3. PROPORTION OR SHARE GIVEN ON DIVISION.**

725. In general.  
 726. Factors and considerations in general.  
 727. Equity and proportionality in general.  
 728. Equality.  
 729. Percentage or share in general.  
 730. Time of assessment or measure.  
 731. Particular factors and considerations.  
 732. — Nature and extent of assets allocated in general.  
 733. — Balance and effect of allocation or other award.  
 734. — Age, health, and need in general.

**134. DIVORCE****V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- 735. — Special needs and expenses; care of child or dependent.
- 736. — Alimony and other support obligations.
- 737. — Education, skills, and experience; employability.
- 738. — Income and earning capacity; employment.
- 739. — Separate wealth, estate and resources.
- 740. — Length of marriage, living standard and lifestyle.
- 741. — Contributions during marriage in general; marital role.
- 742. — Contributions and enhancements to property.
- 743. — Other marital conduct; misconduct in general.
- 744. — Dissipation, secreting and waste; recapture.
  - (1). In general.
  - (2). Nature of act or expenditure in general.
  - (3). Necessaries and family expenses in general.
  - (4). Temporary alimony and support.
  - (5). Debt servicing and payment in general.
  - (6). Property expense and upkeep.
  - (7). Business expenditures.
  - (8). Litigation expenses.
  - (9). Purchases and conveyances.
  - (10). Recapture in general.
- 745. — Fault in separation or divorce.
- 746. — Commission of crime.
- 747. — Tax consequences of distribution.
- 748. — Other particular factors.
- 749. — Particular applications of multiple factors.
- 750. Estoppel and waiver in general.

**4. VALUATION OF PROPERTY OR INTEREST IN GENERAL.**

- 760. In general.
- 761. Time of valuation in general.
- 762. Evidence in general.
- 763. — In general.
- 764. — Presumptions and burden of proof.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- 765. — Weight and sufficiency.
- 766. Methodologies of valuation and allocation in general.
- 767. — In general.
- 768. — Particular methodologies in general.
- 769. — Percentage method.
- 770. — Deferred distribution method.
- 771. — Present value method.
- 772. — Source of funds rule.
- 773. — Coverture fraction.
- 774. Credits, offsets and deductions in general.

**5. VALUATION, DIVISION OR DISTRIBUTION OF PARTICULAR PROPERTY OR INTERESTS.**

- 780. In general.
- 781. Nature of property or interest in general.
- 782. Enhancements and proceeds of separate property.
- 783. Real estate and proceeds thereof in general.
- 784. Farms and ranches.
- 785. Personal and household goods.
- 786. Vehicles, vessels, and other forms of transport.
- 787. Licenses, education and degrees; compensating payments.
- 788. Income and refunds.
- 789. Gaming and lottery proceeds.
- 790. Accounts and deposits.
- 791. Trusts and annuities.
- 792. Tax interests and benefits.
- 793. Possessory interests and conversion rights; motor vehicle leases.
- 794. Businesses and associated assets in general.
- 795. Receivables.
- 796. Stocks, bonds, and other investments.
- 797. Good will.
- 798. Machinery and equipment in general; tools.
- 799. Farm implements and equipment.
- 800. Crops and livestock.
- 801. Insurance policies and proceeds in general.
- 802. Employment benefits in general.
- 803. Retirement or pension rights.

**134. DIVORCE****V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- 804. Military retirement, pension or disability rights.
- 805. Disability benefits and workers' compensation.
- 806. Rights as creditor; notes.
- 807. Choses and expectancies in general.
- 808. Money judgments and recoveries.
- 809. Gifts and inheritance.
- 810. Community property in general.

*Community or separate character and community property reimbursement issues, see MARRIAGE AND COHABITATION.*

**6. METHODS OF DISTRIBUTION.**

- 820. In general.
- 821. Distribution in kind.
- 822. Sale and distribution of proceeds.
- 823. Award of gross sum; money judgments.
- 824. Notes and payment over time; interest.
- 825. Conversion to tenancy in common.
- 826. Credits, offsets and compensating payments.
- 827. Distribution of pension and retirement benefits.

**7. DEBTS AND LIABILITIES IN GENERAL.**

- 830. In general.
- 831. Separate or marital character.
- 832. Factors and considerations in general.
- 833. Allocations of overall debt.
- 834. Particular debts and liabilities.
- 835. — Financial institutions and credit cards.
- 836. — Educational expenses and loans.
- 837. — Medical, dental, and other health-related expenses.
- 838. — Insurance.
- 839. — Taxes and assessments.
- 840. — Automobile loans and leases.
- 841. — Intra-family loans in general.
- 842. — Interspousal loans and transactions.
- 843. — Other particular and multiple debts.
- 844. Reduction of indebtedness; contributions.
- 845. Valuation.

**8. MARITAL RESIDENCE OR HOMESTEAD.**

- 850. In general.
- 851. Valuation and allocation in general.
- 852. Rights of occupancy.
- 853. — In general.
- 854. — Pending proceedings.
- 855. — Rental obligations between parties.
- 856. Effect of child custody.
- 857. Effect of contributions; reimbursement.
- 858. Awards subject to indebtedness in general.
- 859. Allocations of debts and liabilities.
- 860. — In general.
- 861. — Existing obligations.
- 862. — Future obligations.
- 863. Methods of distribution; compensating payments.
- 864. Sale and division of proceeds.

**9. PROCEEDINGS FOR DIVISION OR ASSIGNMENT.**

- 870. In general.
- 871. Jurisdiction of person and property.
- 872. Process, service, notice.
- 873. Appearance.
- 874. Parties.
- 875. Pleadings.
- 876. Evidence.
- 876.1. — In general.
- 876.2. — Presumptions and burden of proof.
  - (1). In general.
  - (2). Nature or character of property or ownership in general.
  - (3). Contributions, appreciation, and enhancements.
  - (4). Gifts, inheritance, and change of form.
  - (5). Allocation, methods and factors therein.
  - (6). Dissipation, waste, and other misconduct.
  - (7). Community property, interests and liabilities.
- Community or separate character and community property reimbursement issues, see MARRIAGE AND COHABITATION.*
- (8). Debts, expenses, and liabilities.
- 876.3. — Admissibility.
- 876.4. — Degree of proof.
- 876.5. — Weight and sufficiency.

**134. DIVORCE****V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- (1). In general.
  - (2). Nature or character of property or ownership in general.
  - (3). Contributions, appreciation, and enhancements.
  - (4). Gifts, inheritance, and change of form.
  - (5). Allocation, methods and factors therein.
  - (6). Dissipation, waste, and other misconduct.
  - (7). Community property, interests and liabilities.  
*Community or separate character and community property reimbursement issues, see MARRIAGE AND COHABITATION.*
  - (8). Debts, expenses, and liabilities.
  - (9). Marital residence or homestead.
- 877. Hearing.
  - 878. Verdict, findings, or determination.
  - 879. — In general.
  - 880. — Time and order of determinations.
  - 881. — Sufficiency and clarity.
  - 882. Judgment or decree.
  - 883. — In general.
  - 884. — Stays and incidental relief.
  - 885. — Form and requisites.
  - 886. — Relief granted in general.
  - 887. — Conditions.
  - 888. — Construction and interpretation.
  - 889. — Operation and effect.
  - 890. — Res judicata and conclusiveness.
  - 891. — Amendment or correction.
  - 892. — Opening and vacating.
    - (1). In general.
    - (2). Grounds in general.
    - (3). Mistake or neglect.
    - (4). Fraud or concealment.
    - (5). Proceedings in general.
    - (6). Time for proceedings.
  - 893. — Modification.
    - (1). In general.
    - (2). Prohibitions and exceptions in general.
    - (3). Grounds in general.
    - (4). Particular cases.
    - (5). — In general.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- (6). — Pensions and retirement benefits.
- (7). — Debts and liabilities.
- (8). — Residence or homestead.
- (9). — Methods of distribution.
- (10). Proceedings.

894. Security for payment.

895. Payment.

**(E) SETTLEMENT AGREEMENTS AND STIPULATIONS.**

*Antenuptial and post-nuptial agreements, see MARRIAGE AND COHABITATION. Stipulations and agreements as to child custody, see CHILD CUSTODY. Stipulations and agreements as to child support, see CHILD SUPPORT.*

- 900. In general.
- 901. Public policy in general.
- 902. Nature and purpose.
- 903. Requisites and validity.
- 904. — In general.
- 905. — Unconscionability.
- 906. — Offer and acceptance.
- 907. — Form and requisites; signature.
- 908. — Execution, acknowledgement, and delivery.
- 909. — Consideration; adequacy of provision for spouse.
- 910. — Validity of assent.
  - (1). In general.
  - (2). Capacity.
  - (3). Counsel or trustee.
  - (4). Fraud.
  - (5). Duress.
  - (6). Undue influence.
  - (7). Accident or mistake.
  - (8). Estoppel or ratification.
  - (9). Evidence.
  - (10). Questions of law or fact; questions for jury.
- 911. — Public policy against inducement of divorce in general.
- 912. — Escalator clauses; automatic, built-in adjustments.
- 913. — Waiver of alimony or property division.
- 914. — Provisions regarding modification or termination of support.
- 915. Approval by court.

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- 916. Construction and operation.
- 917. — In general.
- 918. — Contract principles; intent of parties.
- 919. — Effect in dissolution proceeding in general.
  - (1). In general.
  - (2). Spousal support.
  - (3). Property division and distribution.
- 920. — Rights in property in general.
- 921. — Property included or affected in general.
- 922. — Integration.
- 923. — Real estate and interests therein.
- 924. — Personal property.
- 925. — Pensions and retirement benefits.
- 926. — Debts and liabilities.
- 927. — Estate created or interest conferred.
- 928. — Non-property provisions in general.
- 929. — Trust for benefit of spouse.
- 930. — Bond and indemnification provisions.
- 931. — Insurance.
- 932. Modification prior to or at time of divorce or legal separation.
- 933. Merger in subsequent contract.
- 934. Merger or incorporation in judgment of divorce or legal separation.
- 935. — In general.
- 936. — Requisites of merger or incorporation in general.
- 937. — Agreements merged or incorporated in judgment.
- 938. — Agreements not merged or incorporated in judgment.
- 939. — Agreements partly merged or incorporated in judgment.
- 940. — Effect of merger or incorporation.
- 941. Modification of agreement by court subsequent to divorce or legal separation.
- 942. — In general.
- 943. — Grounds.
  - (1). In general.
  - (2). Fraud.
  - (3). Mistake or accident.
  - (4). Change in circumstances.

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- (5). Consent of parties.
- 944. — Change in the law.
- 945. — Effect of presence or absence of provision as to modification.
- 946. Revocation, rescission and repudiation by acts or agreements of parties.
- 947. — In general.
- 948. — Unilateral withdrawal.
- 949. — Intent.
- 950. — Cohabitation in general.
- 951. — Resumption or offer of marital relations.
- 952. — Filing divorce petition or granting of decree.
- 953. — Death of party.
- 954. Performance or breach.
- 955. — In general.
- 956. — Rights in property in general.
- 957. — Other particular provisions in general.
- 958. — Defenses and excuses for noncompliance.
- 959. Effect of death and rights of survivors in general.
- 960. Rights of children and heirs.
- 961. Rights of creditors or third parties.
- 962. Actions and proceedings in general.
- 963. — In general.
- 964. — Time for proceedings.
- 965. — Jurisdiction and venue.
- 966. — Parties.
- 967. — Notice and process.
- 968. — Pleading.
- 969. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Admissibility in general.
  - (4). Degree of proof.
  - (5). Weight and sufficiency.
- 970. — Trial or hearing in general.
- 971. — Determination and findings.
- 972. — Judgment or order in general.
- 973. — New trial or rehearing.
- 974. — Relief granted in general.
- 975. — Damages or other monetary award.



**134. DIVORCE****(F) ENFORCEMENT OF JUDGMENT  
OR DECREE IN GENERAL.**

- 1000. In general.
- 1001. Authority and discretion of court.
- 1002. Nature and purpose in general.
- 1003. Action or motion on judgment or decree in general.
- 1004. Conditions precedent.
- 1005. Defenses in general.
- 1006. Time for enforcement.
- 1007. Estoppel and waiver.
- 1008. Agreements and stipulations as to enforcement.
- 1009. Nature of violation in general.
- 1010. — In general.
- 1011. — Nonpayment.
- 1012. — Property transfers.
- 1013. Conveyance in fraud of spouse's rights.
- 1014. — In general.
- 1015. — Transfers and transactions invalid.
- 1016. — Knowledge and intent of grantee or purchaser.
- 1017. Alimony and support arrearages; credits and overpayments.
- 1018. — In general.
- 1019. — Vesting of right to unpaid support.
- 1020. — Amount owed in general.
- 1021. — Credits and offsets in general.
- 1022. — Defenses and grounds for reduction in general.
- 1023. — Conduct and circumstances of obligee.
- 1024. — Conduct and circumstances of obligor.
- 1025. — Other particular defenses or grounds.
- 1026. — Retroactive modification.
- 1027. Arrearages on property payments and installments.
- 1028. Administrative enforcement.
- 1029. Dismissal, striking out, or stay of proceedings.
- 1030. Execution.
- 1031. — In general.
- 1032. — Supplementary proceedings.
- 1033. Attachment of property or person.
- 1034. Garnishment and wage execution.
- 1035. Scire facias.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND  
DISPOSITION OF PROPERTY.(Cont'd)**

- 1036. Sequestration and escrow.
- 1037. Liens.
- 1038. Bonds.
- 1039. Trusts and trustees.
- 1040. Receivers and receiverships.
- 1041. Other particular mechanism or remedy.
- 1042. — In general.
- 1043. — Sanctions, penalties and fines.
- 1044. — Qualified domestic relations orders.
- 1045. — Damages.
- 1046. — Sale or distribution in kind; proceeds.
- 1047. — Imprisonment or community service.
- 1048. Rights as to third parties in general.
- 1049. Injunction.
- 1050. Proceedings in general.  
*Discovery, see* ¶85.
- 1051. Persons entitled to prosecute.
- 1052. Jurisdiction.
- 1053. Venue.
- 1054. Time for proceedings; laches.
- 1055. Parties.
- 1056. Process and notice.
- 1057. Appearance.
- 1058. Pleading.
- 1059. Evidence.
  - (1). In general.
  - (2). Admissibility.
  - (3). Presumptions and burden of proof.
  - (4). Weight and sufficiency.
- 1060. Hearing.
  - (1). In general.
  - (2). Entitlement.
  - (3). Questions of law and fact.
- 1061. Findings and verdict.
- 1062. Judgment and order.
  - (1). In general.
  - (2). Construction and operation.
  - (3). Conclusiveness.
- 1063. Interest.
- 1064. Other particular actions and proceedings.
- 1065. — In general.
- 1066. — Actions on bonds.
- 1067. — Actions against third persons.

**134. DIVORCE****V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- 1068. — Actions to subject trust funds.
- 1069. Actions to set aside fraudulent conveyances.
- 1070. — In general.
- 1071. — Right of action.
- 1072. — Proceedings in general.
- 1073. — Parties.
- 1074. — Pleading.
- 1075. — Evidence.
- 1076. — Hearing.
- 1077. — Judgment or decree.

**(G) CONTEMPT.**

- 1100. In general.
- 1101. Nature and form of remedy.
- 1102. Existence of other remedy.
- 1103. Nature of violation.
- 1104. Necessity and mandate of underlying order.
- 1105. Enforcement of agreements and stipulations.
- 1106. Defenses and excuses.
- 1107. Sanctions in general.
- 1108. Imprisonment.
- 1109. Purging and discharge.
- 1110. Proceedings in general.
- 1111. Persons entitled to prosecute.
- 1112. Jurisdiction and venue.
- 1113. Time for proceedings; laches.
- 1114. Parties.
- 1115. Process and notice.
- 1116. Appearance.
- 1117. Pleading.
  - (1). In general.
  - (2). Issues, proof and variance.
- 1118. Evidence.
  - (1). In general.
  - (2). Admissibility.
  - (3). Presumptions and burden of proof.
  - (4). Degree of proof.
  - (5). Weight and sufficiency.
- 1119. Hearing.
  - (1). In general.
  - (2). Entitlement.
  - (3). Counsel.
  - (4). Questions of law and fact.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- (5). Findings and verdict.
- 1120. Judgment and order.
- 1121. — In general.
- 1122. — Construction and operation.
- 1123. — Conclusiveness.

**(H) COUNSEL FEES, COSTS, AND EXPENSES.**

*Costs and fee issues as to child custody, see CHILD CUSTODY. Costs and fee issues as to child support, see CHILD SUPPORT.*

- 1130. In general.
- 1131. Authority and discretion of court.
- 1132. Estoppel, waiver and objections.
- 1133. Stipulations and agreements.
- 1134. Persons entitled or liable in general.
- 1135. Liability of wife in general.
- 1136. Liability of husband in general.
- 1137. Grounds and considerations for award or amount in general.
- 1138. — In general.
- 1139. — Grounds and extent of suit; complexity and merit.
- 1140. — Initiating and prevailing party; partial success.
- 1141. — Conduct of litigation; misconduct in general.
- 1142. Need and ability to pay.
- 1143. — In general.
- 1144. — Financial condition and resources in general.
- 1145. — Resources of wife in general.
- 1146. — Resources of husband in general.
- 1147. — Effect of divorce recoveries.
- 1148. — Effect of child custody or support.
- 1149. Defense or bar to recovery in general; marital fault.
- 1150. Effect of reconciliation in general.
- 1151. Dismissal and discontinuance.
- 1152. Change and number of counsel.
- 1153. Qualifications, skill and labor of counsel.
- 1154. Services and items taxable.
- 1155. — In general.
- 1156. — Particular items.
- 1157. — Particular services.
- 1158. — Legal assistance and research.
- 1159. Stage or condition of cause.

**134. DIVORCE**

*Costs and fee issues as to child custody, see CHILD CUSTODY. Costs and fee issues as to child support, see CHILD SUPPORT.*

- 1160. — In general.
- 1161. — Temporary and pendente lite awards.
- 1162. — Nature of proceeding as factor in general.
- 1163. — Appeal or review.
- 1164. Calculation and apportionment in general.
- 1165. — In general.
- 1166. — Experts.
- 1167. — Other particular items and services.
- 1168. — Attorney fees.
  - (1). In general.
  - (2). Adequacy or excessiveness.
- 1169. Credits and offsets.
- 1170. Applications and proceedings between parties.
  - (1). In general.
  - (2). Jurisdiction and reservation thereof.
  - (3). Time for proceedings.
  - (4). Notice and process.
  - (5). Pleading and dismissal.
  - (6). Evidence in general.
  - (7). Affidavit, summary or itemization.
  - (8). Hearing and determination.
  - (9). Judgment or order.
  - (10). Modification; opening and vacating.
  - (11). Construction, operation and effect.
- 1171. Claim by attorney or other service provider against party.
- 1172. — In general.
- 1173. — Right of action; standing.
- 1174. — Defense or bar to recovery in general.
- 1175. — Proceedings in general.
- 1176. — Intervention in divorce.
- 1177. Security for payment.
- 1178. Payment of costs and allowances.
- 1179. Enforcement and contempt.
- 1180. Inter-jurisdictional issues.
- 1181. Same-sex marriages.

**(I) APPEAL.**

- 1200. In general.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- 1201. Nature and form of remedy.
- 1202. Jurisdiction.
- 1203. Decisions reviewable.
- 1204. — In general.
- 1205. — Courts and other tribunals subject to review.
- 1206. — Nature of subject matter and character of parties.
- 1207. — Finality of determination.
- 1208. — Nature, scope and effect of decision.
- 1209. — Mode of rendition, form and entry of judgment or order.
- 1210. Right of review.
- 1211. — In general.
- 1212. — Persons entitled.
- 1213. — Estoppel, waiver, or agreements affecting right.
- 1214. Presentation and reservation in lower court of grounds of review.
- 1215. — In general.
- 1216. — Issues and questions in lower court.
- 1217. — Objections and motions, and rulings thereon.
- 1218. — Exceptions.
- 1219. — Motions for new trial.
- 1220. — Cases and questions reserved or certified.
- 1221. Parties.
- 1222. Transfer of cause.
- 1223. — In general.
- 1224. — Time of taking proceedings.
- 1225. — Petition or prayer, allowance and certificate or affidavit.
- 1226. — Payment of fees or costs, and bonds or other securities; in forma pauperis.
- 1227. — Writ of error, citation, or notice.
- 1228. — Entry, docketing and appearance.
- 1229. Effect of transfer of cause or proceedings therefor.
- 1230. — In general.
- 1231. — Powers and proceedings of lower court.
- 1232. — Jurisdiction acquired by appellate court.
- 1233. Supersedeas or stay of proceedings.

**134. DIVORCE****V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- 1234. Record.
- 1235. — In general.
- 1236. — Matters to be shown.
- 1237. — Scope and contents.
- 1238. — Necessity of bill of exceptions, case, or statement of facts.
- 1239. — Contents, making and settlement of case or statement of facts.
- 1240. — Abstracts.
- 1241. — Making, form and requisites of transcript or return.
- 1242. — Authentication and certification.
- 1243. — Transmission and filing.
- 1244. — Printing and service of copies.
- 1245. — Defects, objections, amendments and corrections.
- 1246. — Conclusiveness and effect.
- 1247. — Impeachment or contradiction.
- 1248. — Questions presented for review.
- 1249. — Matters not apparent of record.
- 1250. Assignment of errors.
- 1251. Briefs.
- 1252. Dismissal, withdrawal, or abandonment.
- 1253. — In general.
- 1254. — Mootness.
- 1255. Dockets, calendars, and proceedings preliminary to hearing.
- 1256. Hearing.
- 1257. — In general.
- 1258. — Rehearing.
- 1259. Review.
- 1260. — In general.
- 1261. — Scope, standards and extent, in general.
  - (1). In general.
  - (2). Questions considered.
  - (3). Issues not necessary to review.
  - (4). Interrelatedness of spousal support, allowances and property division.
- 1262. — Interlocutory, collateral, and supplementary proceedings and questions.
- 1263. — Parties entitled to allege error.
  - (1). In general.
  - (2). Estoppel.
- 1264. — Amendments.
- 1265. — Additional proofs.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- 1266. — De novo review.
  - (1). In general.
  - (2). Spousal support.
  - (3). — In general.
  - (4). — Modification.
  - (5). Counsel fees, costs and allowances.
  - (6). Disposition of property.
  - (7). Settlement agreements and stipulations.
  - (8). Enforcement and arrearages.
- 1267. Presumptions.
- 1268. — In general.
- 1269. — Burden of showing error.
- 1270. — Facts or evidence not shown by record.
  - (1). In general.
  - (2). Spousal support.
  - (3). Counsel fees, costs and allowances.
  - (4). Disposition of property.
  - (5). Modification proceedings.
  - (6). — In general.
  - (7). — Spousal support.
  - (8). — Disposition of property.
  - (9). — Settlement agreements.
  - (10). Enforcement and arrearages.
- 1271. — Spousal support.
- 1272. — Counsel fees, costs and allowances.
- 1273. — Disposition of property.
- 1274. — Settlement agreements and stipulations.
- 1275. — Modification proceedings.
  - (1). In general.
  - (2). Spousal support.
  - (3). Disposition of property.
  - (4). Settlement agreements and stipulations.
- 1276. — Enforcement and arrearages.
- 1277. Discretion.
- 1278. — In general.
- 1279. — Burden of showing grounds of review.
- 1280. — Injunction against disposition of property before award.
- 1281. — Spousal support.
  - (1). In general.

**134. DIVORCE****V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- (2). Support pending proceedings.
- (3). Award of gross sum; alimony in gross.
- (4). Rehabilitative alimony.
- (5). Modification.
- (6). Commencement, duration, termination.
- 1282. — Counsel fees, costs and allowances.
- 1283. — Disposition of property.
  - (1). In general.
  - (2). Valuation.
  - (3). Modification and vacation.
- 1284. — Settlement agreements and stipulations.
  - (1). In general.
  - (2). Modification and vacation.
- 1285. — Enforcement and arrearages.
- 1286. Questions of fact, verdicts and findings.
- 1287. — In general.
- 1288. — Spousal support.
  - (1). In general.
  - (2). Support pending proceedings.
  - (3). Award of gross sum; alimony in gross.
  - (4). Rehabilitative support.
  - (5). Modification.
  - (6). Commencement, duration, termination.
- 1289. — Counsel fees, costs and allowances.
- 1290. — Disposition of property.
  - (1). In general.
  - (2). Valuation.
  - (3). Modification and vacation.
- 1291. — Settlement agreements and stipulations.
  - (1). In general.
  - (2). Modification and vacation.
- 1292. — Enforcement and arrearages.
- 1293. — Findings of referee, master, commissioner, or auditor.
- 1294. — Refusal to find facts.
- 1295. — Questions of fact on motions or other interlocutory or special proceedings.
- 1296. Harmless error.
- 1297. — In general.

**V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- 1298. — Spousal support.
- 1299. — Attorney fees or costs.
- 1300. — Property valuation and distribution.
- 1301. — Settlement agreements and stipulations.
- 1302. — Burden to show prejudice.
- 1303. — Presumption as to effect of error.
- 1304. — Error favorable to party complaining.
- 1305. — Interlocutory and preliminary proceedings in general.
- 1306. — Spousal support pending proceedings.
- 1307. — Discovery.
- 1308. — Conduct of trial or hearing.
- 1309. — Reception of evidence.
- 1310. — Witnesses.
- 1311. — Admission and exclusion of evidence.
- 1312. — Instructions.
- 1313. — Verdict.
- 1314. — Findings and failure to make findings.
- 1315. — Judgment or order.
  - (1). In general.
  - (2). Modification and amendment.
  - (3). — In general.
  - (4). — Spousal support.
  - (5). — Property valuation and distribution.
- 1316. — Proceedings after judgment.
  - (1). In general.
  - (2). Enforcement, contempt, and arrears.
- 1317. Error waived in appellate court.
- 1318. Decisions of intermediary courts.
- 1319. Subsequent appeals.
- 1320. Determination and disposition of cause.
- 1321. — In general.
- 1322. — Spousal support.
  - (1). In general.
  - (2). Support pending proceedings.
- 1323. — Property.
  - (1). In general.
  - (2). Marital or separate property.
  - (3). Agreements and stipulations.

**134. DIVORCE****V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)**

- (4). Division and distribution in general.
- (5). Debts and liabilities.
- (6). Homestead or marital residence.
- (7). Valuation.
- 1324. — Attorney fees and costs.
- 1325. Liabilities on bonds and undertakings.

**VI. OPERATION AND EFFECT OF DIVORCE, AND RIGHTS OF DIVORCED PERSONS.**

- 1350. In general.
- 1351. Limited divorce in general.
- 1352. Divorce from bed and board; separation.
- 1353. Decree nisi.
- 1354. Absolute divorce.
- 1355. Status in general.
- 1356. Rights and liabilities in general.
- 1357. — In general.
- 1358. — Mutual rights and liabilities in general.
- 1359. — Rights and liabilities as to property in general.
- 1360. — Tenancies.
- 1361. — Personal rights and liabilities in general.
- 1362. Names.
- 1363. Right to marry; leave of court.
- 1364. Property not disposed of by judgment or decree.

**VII. FOREIGN DIVORCES.**

*Foreign custody decrees, Hague Convention, and other international issues as to custody, see CHILD CUSTODY. Foreign child support decrees and other international issues as to child support, see CHILD SUPPORT.*

- 1400. In general.
- 1401. Foreign adjudications recognized.
- 1402. — In general.
- 1403. — Reasons for recognition or refusal to recognize.
  - (1). In general.
  - (2). Comity.
  - (3). Full faith and credit.
- 1404. — Particular foreign divorces.
  - (1). In general.
  - (2). Dissolution of Indian marriage.
  - (3). Nevada divorces.

**VII. FOREIGN DIVORCES.(Cont'd)**

- 1405. — Validity of adjudication in general.
- 1406. — Grounds of divorce.
- 1407. — Nature of adjudication.
  - (1). In general.
  - (2). Finality.
  - (3). Limited divorce or separation.
- 1408. Jurisdiction of foreign court.
- 1409. — In general.
- 1410. — Right to inquire into jurisdiction.
- 1411. — Domicile or residence in general.
- 1412. — Genuineness and sufficiency of residence.
  - (1). In general.
  - (2). Necessity of bona fide residence or domicile.
  - (3). Length of residence.
- 1413. — Residence for purpose of securing divorce.
- 1414. — Matrimonial or separate domicile.
- 1415. — Jurisdiction of person.
- 1416. — Appearance or consent.
  - (1). In general.
  - (2). Effect in general.
  - (3). Domicile or residence of parties.
  - (4). Sufficiency of appearance or consent.
- 1417. — Recitals or findings of jurisdictional facts.
  - (1). In general.
  - (2). Conclusiveness and effect in general.
  - (3). Domicile or residence of parties.
- 1418. Defects as to process or other proceedings.
- 1419. — In general.
- 1420. — Process or notice in general.
- 1421. — Personal service, necessity, and effect in general.
- 1422. — Domicile or residence of parties.
  - (1). In general.
  - (2). Genuineness and sufficiency.
  - (3). Matrimonial domicile.
- 1423. — Substituted or constructive service in general.
  - (1). In general.
  - (2). Domicile or residence in general.

**134. DIVORCE****VII. FOREIGN DIVORCES.(Cont'd)**

- (3). Genuineness and sufficiency of domicile or residence.
- (4). Matrimonial domicile.
- 1424. — Service by publication.
  - (1). In general.
  - (2). Domicile or residence in general.
  - (3). Genuineness and sufficiency of domicile or residence.
  - (4). Matrimonial domicile.
- 1425. — Service outside jurisdiction.
- 1426. — Appearance or consent.
- 1427. — “Mail order” decrees.
- 1428. Fraud.
  - 1429. — In general.
  - 1430. — Nature of fraud in general.
  - 1431. — Domicile or residence, fraud as to.
  - 1432. — Process or service, fraud relating to.
  - 1433. — False testimony.
  - 1434. — Appearance, consent, or participation.
  - 1435. Construction and operation.
  - 1436. — In general.
  - 1437. — Personal status and mutual rights and liabilities.
  - 1438. — Right to remarry.
  - 1439. — Merger and bar of causes of action and defenses.
  - 1440. — Matters concluded.
  - 1441. — Persons concluded.
    - (1). In general.
    - (2). Children.
    - (3). Subsequent spouse.
  - 1442. — Estoppel against attack; laches.
    - (1). In general.
    - (2). Grounds of estoppel in general.
    - (3). Procuring or obtaining divorce.
    - (4). Remarriage.
    - (5). Laches.
  - 1443. — Proceedings for enforcement or annulment.
  - 1444. Support, maintenance, or alimony.
  - 1445. — In general.
  - 1446. — Conclusiveness and effect of foreign decree in general.
  - 1447. — Foreign decree as precluding award of alimony or support.

**VII. FOREIGN DIVORCES.(Cont'd)**

- (1). In general.
- (2). Temporary allowances and counsel fees.
- 1448. — Superseding award of alimony or maintenance.
- 1449. — Enforcement of foreign decree in general.
- 1450. — Jurisdiction of person or property; process.
  - (1). In general.
  - (2). Substituted or constructive service in general.
  - (3). Service by publication.
- 1451. — Finality of decree in general.
  - (1). In general.
  - (2). What decrees are final in general.
  - (3). Decrees subject to revision.
- 1452. — Enforcement as to installments accrued.
  - (1). In general.
  - (2). Decrees subject to revision as to accrued installments.
- 1453. — Defenses to enforcement.
- 1454. — Remedies and proceedings to enforce.
  - (1). In general.
  - (2). Equitable remedies.
  - (3). Contempt.
- 1455. — Modification.
- 1456. Disposition of property.
  - (1). In general.
  - (2). Real property.
  - (3). Joint or community property.
- 1457. Separation agreements and property settlements.
  - (1). In general.
  - (2). Validity of agreement.
- 1458. Pleading.
- 1459. — In general.
- 1460. — Sufficiency in general.
- 1461. — Alimony and disposition of property.
- 1462. — Issues, proof, and variance.
- 1463. Presumptions and burden of proof.
- 1464. — In general.
- 1465. — Validity of decree in general.
- 1466. — Jurisdiction of foreign court in general.

**135H. DOUBLE JEOPARDY****VII. FOREIGN DIVORCES.**(Cont'd)

- 1467. — Domicile or residence.
- 1468. Admissibility of evidence.
- 1469. Weight and sufficiency of evidence.
- 1470. — In general.
- 1471. — Validity of decree in general.
- 1472. — Jurisdiction of foreign court.
- 1473. — Domicile or residence.
  - (1). In general.
  - (2). Bona fide domicile or residence.
  - (3). Residence for purpose of securing divorce.
- 1474. — Process and other proceedings.
- 1475. — Fraud.
- 1476. Questions for jury.

**135. DOMICILE****SUBJECTS INCLUDED**

Places of fixed habitation of individuals  
 Nature, acquisition and change thereof in general

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Corporations, domicile of, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Particular purposes and subjects, application of the law of domicile to, see DIVORCE, ELECTION LAW, VENUE, and other specific topics

- 1. Nature and elements.
- 2. Domicile distinguished from residence.
- 3. Domicile of origin.
- 4. Domicile of choice and change of domicile.
  - (1). In general.
  - (2). Intent.
- 5. Domicile by operation of law.
- 6. Place of residence situated partly in different jurisdictions.
- 7. Evidence.
- 7.1. — In general.
- 8. — Presumptions and burden of proof.

- 9. — Admissibility.
- 10. — Weight and sufficiency.
- 11. Questions for jury.

**135H. DOUBLE JEOPARDY****SUBJECTS INCLUDED**

The doctrines of double jeopardy, former jeopardy, autrefois acquit, and autrefois convict

Specific constitutional or statutory protections against multiple or repeated jeopardy of the same person for the same offense

Requirements that all offenses in a transaction be joined in a single prosecution

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Different offenses in the same transaction, generally, see CRIMINAL LAW

Prohibition of double punishment and limitations on sentencing for different offenses in the same transaction, see SENTENCING AND PUNISHMENT

Offenses included in other offenses, generally, see INDICTMENTS AND CHARGING INSTRUMENTS

Collateral estoppel or res judicata effect of determinations in criminal prosecutions, see RES JUDICATA

Pleading a former prosecution as a defense to another prosecution, see CRIMINAL LAW

Acquittal or conviction of offense as bar to prosecution for perjury committed on trial thereof, see PERJURY

- I. IN GENERAL, ¶1–20.
- II. PROCEEDINGS, OFFENSES, PUNISHMENTS, AND PERSONS INVOLVED OR AFFECTED, ¶21–50.
- III. ELEMENTS OF FORMER JEOPARDY, ¶51–80.
- IV. EFFECT OF PROCEEDINGS AFTER ATTACHMENT OF JEOPARDY, ¶81–130.
- V. OFFENSES, ELEMENTS, AND ISSUES FORECLOSED, ¶131–200.



**135H. DOUBLE JEOPARDY****V. OFFENSES, ELEMENTS, AND ISSUES  
FORECLOSED—Cont'd**

- (A) IN GENERAL, ¶131–160.
- (B) INCLUDED OFFENSES, ¶161–180.
- (C) IDENTITY OF PARTIES,  
¶181–200.

**VI. WAIVER, ¶201–202.****I. IN GENERAL.**

- 1. In general.
- 2. Constitutional and statutory provisions.
- 3. Relation to collateral estoppel or res judicata.
- 4. Limit on court or legislature.
- 5. Prohibition of multiple proceedings or punishments.
- 5.1. — In general.
- 6. — Multiple prosecutions.
- 7. Right to completion of trial by single tribunal.

**II. PROCEEDINGS, OFFENSES, PUNISHMENTS, AND PERSONS INVOLVED OR AFFECTED.**

- 21. In general.
- 22. Particular proceedings.
- 23. Civil or criminal nature.
- 24. Administrative or non-judicial proceedings; prison discipline.
- 25. Fines, penalties, and forfeitures.
- 26. Simultaneous proceedings; multiplicity.
- 27. Proof of claimed offenses in other proceedings.
- 28. Multiple sentences or punishments.
- 29. Sentencing proceedings; cumulative punishment.
- 29.1. — In general.
- 30. — Enhanced offense or punishment.
- 31. Probation, parole, or sentence determination proceedings.
- 32. Appeal by government; mandamus or prohibition.
- 33. Juvenile proceedings.
- 34. Contempt.
- 35. Persons protected.

**III. ELEMENTS OF FORMER JEOPARDY.**

- 51. In general.
- 52. Character, constitution, and jurisdiction of court.
- 53. Fraudulent or collusive prosecution.

**III. ELEMENTS OF FORMER  
JEOPARDY.(Cont'd)**

- 54. Preliminary or summary proceedings.
- 55. Indictment or information.
- 56. Arraignment and plea.
- 56.1. — In general.
- 57. — Plea of guilty or nolo contendere.
- 58. Jury and oath.
- 59. Empanelling and swearing jury, or swearing witness and receiving evidence.
- 60. Verdict, judgment, or sentence.
- 60.1. — In general.
- 61. — Directed verdict.
- 62. Juvenile proceedings.

**IV. EFFECT OF PROCEEDINGS AFTER  
ATTACHMENT OF JEOPARDY.**

- 81. In general.
- 82. Effect of proceedings before verdict.
- 82.1. — In general.
- 83. — Removal and replacement of juror.
- 84. — Continuance or other temporary interruption; reopening or resubmission.
- 85. — Amendment of charges.
- 86. Retrial and premature termination of case in general.
- 87. Duration and termination of jeopardy, in general.
- 88. Dismissal or discharge in general.
- 88.1. — In general.
- 89. — Nolle prosequi or discontinuance.
- 90. — Dismissal or discharge for want of probable cause; preliminary hearing discharge.
- 91. — Dismissal, etc., for defects in charges.
- (1). In general.
- (2). Variance.
- 92. — Delay; speedy trial issues.
- 93. — Want or insufficiency of evidence.
- 94. — Repeated terminations.
- 95. Mistrial or recusal.
- 95.1. — In general.
- 96. — Consent or fault of accused.
- 97. — Fault of prosecution.
- 98. — Failure of jurors to agree.
- 99. — Manifest necessity; other grounds.
- 100. Acquittal.
- 100.1. — In general.

**135H. DOUBLE JEOPARDY****IV. EFFECT OF PROCEEDINGS AFTER ATTACHMENT OF JEOPARDY.(Cont'd)**

- 101. — Appeal or other review of acquittal.
- 102. — Reuse of evidence.
- 103. — What constitutes acquittal, in general.
- 104. — Dismissal, nonsuit, or mistrial as acquittal.
- 105. Conviction in general.
- 106. Relief from guilty verdict; judgment notwithstanding verdict (JNOV) or of acquittal.
- 107. Effect of arresting, vacating, or reversing judgment or sentence, or of granting new trial.
- 107.1. — In general.
- 108. — Particular grounds for relief.
- 109. — Sufficiency or insufficiency of evidence.
- 110. Procedure on review; further review.
- 111. Sentence beyond verdict.
- 112. Resentencing; increase of punishment.
- 112.1. — In general.
- 113. — Sentence on trial de novo; two tier system.
- 114. Modification or correction of sentence; cure of illegal sentence.
- 114.1. — In general.
- 115. — Judgment or sentence vacated or reversed on review or post-conviction motion.
- 116. — Partial invalidity; several counts or sentences.
- 117. — Sentence on probation revocation.
- 118. Effect of commencement or service of prior sentence; sentence credit.
- 119. Proceedings after discharge on habeas corpus.

**V. OFFENSES, ELEMENTS, AND ISSUES FORECLOSED.****(A) IN GENERAL.**

- 131. In general.
- 132. Identity of offenses; same offense.
- 132.1. — In general.
- 133. — Identity in law and fact.
- 134. — Several offenses in one act; separate statutory offenses and legislative intent.

**V. OFFENSES, ELEMENTS, AND ISSUES FORECLOSED.(Cont'd)**

- 135. — Proof of fact not required for other offense.
  - 136. — “Same evidence” test; sufficiency of evidence of one offense to sustain conviction for the other.
  - 137. — “Single transaction” test.
  - 138. Compulsory joinder requirement.
  - 139. Particular offenses, identity of.  
*Offenses are classified here in descending order; e.g., a case determining the propriety of prosecution or conviction for both larceny and burglary will be classified to §144 whereas one involving burglary and homicide will be placed at §150.*
  - 139.1. — In general.
  - 140. — Weapons offenses.
  - 141. — Assault, battery, or armed violence.
  - 142. — Motor vehicle and traffic offenses.
  - 143. — Larceny; possession of stolen goods.
  - 144. — Burglary.
  - 145. — Robbery.
  - 146. — Drugs and narcotics.
  - 147. — Forgery.
  - 148. — Sex offenses; obscenity.
  - 149. — Kidnapping.
  - 150. — Homicide.
    - (1). In general.
    - (2). Felony-murder or misdemeanor-manslaughter prosecution.
    - (3). Death of victim after earlier prosecution; new evidence.
  - 151. — Conspiracy; racketeering.
    - (1). In general.
    - (2). Multiple conspiracies or prosecutions.
    - (3). Conspiracy and substantive or predicate offense.
    - (3.1). — In general.
    - (4). — Particular cases.
    - (5). — Drug or narcotics cases.
  - 152. — Periods covered by prosecutions.
- (B) INCLUDED OFFENSES.**
- 161. Lesser offenses included in greater, in general.
  - 162. What constitute lesser offenses.

**135H. DOUBLE JEOPARDY****V. OFFENSES, ELEMENTS, AND ISSUES  
FORECLOSED.**(Cont'd)

- 163. Ruling on proceeding on one or more charges affecting remaining charges, in general.
- 164. Ruling on greater as bar to prosecution for lesser offense.
- 165. Ruling on lesser as bar to prosecution for greater offense.
- 166. Conviction of lower as acquittal of higher grade or degree of offense.
- 166.1. — In general.
- 167. — Plea of guilty or nolo contendere to lesser offense.
- 168. Prior inability to prosecute greater offense; jurisdictional questions.

**(C) IDENTITY OF PARTIES.**

- 181. In general.
- 182. Crimes against different victims.
- 183. Offenses against different sovereignties or governmental units.
- 183.1. — In general.
- 184. — Proceedings in different courts, in general.
- 185. — Offenses against several states.
- 186. — Offenses against United States and a state or territory.
- 187. — Offenses against municipality and other governments.
- 188. Identity of defendants; jeopardy of co-defendants.

**VI. WAIVER.**

- 201. In general.
- 202. Plea of guilty, or nolo contendere.

**141. EASEMENTS****SUBJECTS INCLUDED**

Nature and incidents of privileges and servitudes of proprietors of real property in lands of others, independent of ownership of the soil

Creation thereof by reservation, grant, express or implied, or prescription

Use, transfer, and extinguishment thereof

Rights, powers and liabilities of proprietors of dominant and servient estates

Remedies relating thereto

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Adjoining landowners' mutual rights, duties and liabilities in general, see **ADJOINING LANDOWNERS**

Air space, rights in, see **AVIATION**

Licenses for use of real property, and distinction between them and easements, see **LICENSES**

Particular species of property, easements affecting, see **MINES AND MINERALS, PARTY WALLS, WATER LAW**, and other specific topics

Profit a prendre, see **LICENSES**

Public easements and public utility easements, see **DEDICATION, ELECTRICITY, GAS, HIGHWAYS, RAILROADS, TELECOMMUNICATIONS, WATER LAW**

**I. CREATION, EXISTENCE, AND TERMINATION,** ¶1-37.

**II. EXTENT OF RIGHT, USE, AND OBSTRUCTION,** ¶38-72.

**I. CREATION, EXISTENCE,  
AND TERMINATION.**

- 1. Nature and elements of right.
- 2. Subject-matter and parties in general.
- 3. Easements appurtenant or in gross.
  - (1). In general.
  - (2). Ways.
- 4. Prescription.
- 5. — In general.
- 6. — Mode and extent of use.
- 7. — Duration and continuity of use.
  - (.5). In general.
  - (1). Beginning of required period.
  - (2). Use of less than 20 years.
  - (3). Use of 20 years or more.
  - (4). Period of limitation, or statutory period.
  - (5). Continuity of use.
  - (6). Interference with use.
- 8. — Adverse character of use.
  - (1). In general.

**141. EASEMENTS****I. CREATION, EXISTENCE, AND  
TERMINATION.(Cont'd)**

- (2). Use by permission or agreement.
- (4). Exclusiveness of use.
- 9. — Claim or color of right.
  - (1). In general.
  - (2). Duration of use.
- 10. — Acquisition of rights of way.
  - (1). In general.
  - (2). In public ways.
  - (3). Over railroad right of way.
  - (4). Through uninclosed lands.
- 11. — Acquisition of rights as to light, air, and view.
- 12. Express grant.
  - (1). In general.
  - (2). Sufficiency of words of conveyance in general.
  - (3). Certainty.
- 13. Covenant operating as grant.
- 14. Exception or reservation.
  - (1). In general.
  - (2). Ways.
  - (3). Reservation for benefit of third person.
- 15. Implication.
- 15.1. — In general.
- 16. — Severance of ownership of dominant and servient tenements.
- 17. — Ways in general.
  - (1). In general.
  - (2). Sale of land bounded by way in general.
  - (3). Sale of land bounded by unopened way.
  - (4). Sale of platted land in general.
  - (5). Implied reservation.
- 18. — Ways of necessity.
  - (1). In general.
  - (2). Grant of tract partly or entirely surrounded by grantor's land.
  - (3). Existence of other means of access.
  - (4). Necessity of grant or privity of title.
  - (5). Grant of timber on tract inaccessible except over land of grantor or another.
  - (6). Access by waterway.
  - (7). Way over railroad right of way.

**I. CREATION, EXISTENCE, AND  
TERMINATION.(Cont'd)**

- 19. — Light, air, and view.
- 20. Right as against purchasers of servient tenement.
- 21. — In general.
- 22. — Continuous and apparent easements, and notice.
- 23. Severance of right.
- 24. Transfer of right.
- 25. Commencement and duration.
- 26. Termination in general.
  - (1). In general.
  - (2). Alterations in dominant estate.
  - (3). Cessation of necessity.
  - (4). Partial destruction of servient estate.
  - (5). Effect of termination.
- 27. Merger.
- 28. Release.
- 29. Extinguishment by agreement or license.
- 30. Abandonment or nonuser.
  - (1). In general.
  - (2). Easements created by grant or reservation.
  - (3). Time requisite.
- 31. Forfeiture for misuser.
- 32. Adverse possession.
- 33. Dedication or appropriation to public use.
- 34. Revival of lost right.
- 35. Pleading as defense.
- 36. Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.
- 37. Questions for jury.

**II. EXTENT OF RIGHT, USE,  
AND OBSTRUCTION.**

- 38. Relation between owners of dominant and servient tenements in general.
- 39. Extent of right.
- 40. — In general.
- 41. — By prescription.
- 42. — By express grant or reservation.
- 43. — By implication.
- 44. — Ways.
  - (1). In general.

**141. EASEMENTS****II. EXTENT OF RIGHT, USE, AND OBSTRUCTION.**(Cont'd)

- (2). Extent of way.
- 45. — Light, air, and view.
- 46. Location.
- 47. — In general.
- 48. — Ways.
  - (1). In general.
  - (2). Persons entitled to locate way.
  - (3). Way existing at time of grant.
  - (4). Ways of necessity.
  - (5). Practical location by parties.
  - (6). Change of location.
- 49. — Deviation from way.
- 50. Mode of use.
- 51. Purposes of use.
- 52. Persons entitled to use.
- 53. Maintenance and repair.
- 54. Alteration.
- 55. Misuser.
- 56. Obstruction or disturbance.
- 57. — In general.
- 58. — Ways.
  - (1). In general.
  - (2). Structures in or over way.
  - (3). Fences and gates.
- 59. — Light, air, or view.
- 60. Removal of obstruction.
- 61. Actions for establishment and protection of easements.
  - (.5). In general.
    - (1). Nature and form of remedy in general.
    - (2). Injunction.
    - (3). Rights of action and conditions precedent.
    - (4). Jurisdiction.
    - (5). Time to sue and laches.
  - See also LIMITATION OF ACTIONS.*
  - (6). Temporary injunction.
  - (7). Parties.
  - (8). Pleading.
  - (9). Evidence.
  - (9.5). Trial.
  - (10). Nature and extent of relief in general.
  - (11). Compensation or damages instead of injunction.
  - (12). Judgment or decree and enforcement thereof.

**II. EXTENT OF RIGHT, USE, AND OBSTRUCTION.**(Cont'd)

- 62. Actions for injuries to, or by use of, easements.
- 62.1. — In general.
- 63. — Nature and form; injunction.
- 64. — Rights of action and defenses.
- 65. — Jurisdiction and venue.
- 66. — Time to sue and limitations.
- 67. — Parties.
- 68. — Pleading.
- 69. — Evidence.
- 70. — Damages.
- 71. — Trial.
- 72. — Judgment and enforcement thereof.

**141E. EDUCATION****SUBJECTS INCLUDED**

- Institutions for instruction of students, whether maintained as private schools, or maintained by government as common or public schools
- Bodies, incorporated or unincorporated, formed for the instruction of students in one or more courses of study more advanced than those pursued in ordinary schools or academies
- Bodies formed for maintenance of such institutions, whether unincorporated or incorporated by special charters or under general laws, or formed by territorial subdivision of counties, towns, or cities, etc.
- Constitutional and statutory provisions relating thereto
- Public supervision and regulation of such schools in general
- Incorporation and organization of private schools, academies, etc., and public aid and regulation thereof
- Creation, organization, boundaries, alteration and dissolution of school districts
- School meetings and government and officers of school districts

**141E. EDUCATION**

School lands, funds, buildings, furniture, textbooks, and other property and supplies, and contracts relating thereto

Indebtedness, bonds, warrants, and other securities of school districts

Taxation by school districts

Qualifications, employment and discharge, and compensation of teachers and other specialized officers and employees

Admission and attendance of pupils

Curriculum, rules, discipline and government of schools

School desegregation and rights of students with disabilities

Interscholastic and intercollegiate associations

Student financial aid

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Child abuse reporting, see INFANTS

Civil rights laws, application of, see CIVIL RIGHTS

Constitutional guarantees generally, see CONSTITUTIONAL LAW

Corporations or unincorporated associations in general, see ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS

Employee organizations and collective bargaining, see LABOR AND EMPLOYMENT

Family Educational Rights and Privacy Act (FERPA), see RECORDS

Flight schools, see AVIATION

Indian schools, see INDIANS ¶140

Injuries at sporting events to participants or spectators, see PUBLIC AMUSEMENT AND ENTERTAINMENT

Liability of school district for vehicle-related injuries, see AUTOMOBILES

Liability of school district to school bus passengers, see CARRIERS

Military base schools, see ARMED SERVICES

Preschool programs (except as program requirements pertain to teachers and curriculum), see INFANTS and PUBLIC ASSISTANCE

Public lands reserved as school lands or university lands, but not allotted to school

districts or universities, see PUBLIC LANDS

School meal programs, see PUBLIC ASSISTANCE

Schooling for adult prisoners, see PRISONS

Tax exemption for school or college property, see TAXATION

Vocational rehabilitation assistance for attending college, see PUBLIC ASSISTANCE

I. IN GENERAL, ¶1–9.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS, ¶10–909.

(A) ESTABLISHMENT, OPERATION, AND REGULATION IN GENERAL, ¶10–389.

1. IN GENERAL, ¶10–29.

2. CREATION, ALTERATION, AND DISSOLUTION OF DISTRICTS, ¶30–69.

3. GOVERNMENT AND BOARDS, ¶70–99.

4. DISTRICT PROPERTY IN GENERAL, ¶100–110.

5. SCHOOL BUILDINGS AND GROUNDS, ¶111–139.

6. DISTRICT CONTRACTS, ¶140–189.

7. DISTRICT LIABILITIES IN GENERAL, ¶190–209.

8. SCHOOL AID AND FUNDING, ¶210–229.

9. ADMINISTRATION OF FINANCES; INDEBTEDNESS, ¶230–279.

10. SCHOOL TAXES, ¶280–359.

11. CLAIMS AGAINST DISTRICT, ¶360–371.

12. ACTIONS IN GENERAL, ¶372–389.

(B) TAXPAYERS' SUITS AND OTHER REMEDIES, ¶390–409.

(C) OFFICERS AND EMPLOYEES, ¶410–439.

(D) TEACHERS AND EDUCATION PROFESSIONALS, ¶440–649.

1. IN GENERAL, ¶440–489.

2. TENURE; CONTINUING CONTRACT STATUS, ¶490–509.

3. COMPENSATION, ¶510–539.

4. PENSIONS AND BENEFITS, ¶540–559.

5. ADVERSE PERSONNEL ACTIONS, ¶560–629.

**141E. EDUCATION****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS—Cont'd****(D) TEACHERS AND EDUCATION PROFESSIONALS—Cont'd****6. INJURIES TO AND LIABILITY THEREFOR, ¶630–649.****(E) PUPILS OR STUDENTS, ¶650–829.****1. IN GENERAL, ¶650–669.****2. ADMISSION AND ATTENDANCE, ¶670–709.****3. CURRICULUM AND INSTRUCTION, ¶710–729.****4. CONTROL AND DISCIPLINE, ¶730–759.****5. EXTRACURRICULAR ACTIVITIES, ¶760–769.****6. TRANSPORTATION, ¶770–779.****7. GRADUATION AND DIPLOMA, ¶780–789.****8. INJURIES TO PUPILS OR STUDENTS, ¶790–829.****(F) RACIAL SEGREGATION AND DESEGREGATION, ¶830–859.****(G) CHILDREN WITH DISABILITIES; SPECIAL EDUCATION, ¶860–909.****III. PRIVATE PRIMARY AND SECONDARY SCHOOLS, ¶910–959.****IV. INTERSCHOLASTIC ASSOCIATIONS, ¶960–969.****V. POSTSECONDARY PROPRIETARY SCHOOLS; VOCATIONAL AND OTHER PARTICULARIZED TRAINING, ¶970–989.****VI. COLLEGES AND UNIVERSITIES, ¶990–1229.****(A) ESTABLISHMENT AND REGULATION IN GENERAL, ¶990–1009.****(B) GOVERNANCE AND BOARDS, ¶1010–1019.****(C) PROPERTY, ¶1020–1029.****(D) CONTRACTS, ¶1030–1050.****(E) LIABILITIES, ¶1051–1059.****(F) FISCAL MATTERS, ¶1060–1079.****(G) CLAIMS, ¶1080–1089.****(H) ACTIONS, ¶1090–1109.****(I) OFFICERS AND EMPLOYEES, ¶1110–1129.****(J) FACULTY AND EDUCATION PROFESSIONALS, ¶1130–1159.****(K) STUDENTS, ¶1160–1219.****(L) INTERCOLLEGIATE ASSOCIATIONS, ¶1220–1229.****VII. STUDENT FINANCIAL AID, ¶1230–1243.****I. IN GENERAL.****1. In general.****I. IN GENERAL.(Cont'd)****2. Right to education in general.****3. What law governs.****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.****(A) ESTABLISHMENT, OPERATION, AND REGULATION IN GENERAL.****1. IN GENERAL.****10. In general.****11. Power to establish and maintain in general.****12. Constitutional and statutory provisions.****13. — In general.****14. — Purpose and construction in general.****15. — Validity of statutes.****16. — Retroactive operation.****17. School system, and establishment of schools in general.****18. Discontinuance of schools in general.****19. Application of school system to cities and incorporated towns and villages.****20. Charter schools.****21. — In general.****22. — Application and approval.****23. — Termination of charter.****24. — Judicial review.****25. — Construction and operation of charter.****26. State educational institutions.****27. Application to school purposes of school lands and proceeds thereof.****28. Regulation in general.****29. Judicial supervision in general.****2. CREATION, ALTERATION, AND DISSOLUTION OF DISTRICTS.****30. In general.****31. Constitutional and statutory provisions.****32. — In general.****33. — Purpose and construction in general.****34. — Validity of statutes.****35. — Retroactive operation.****36. Nature and status as corporations.****37. Creation and organization.****38. — In general.****(1). In general.**

**141E. EDUCATION****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- (2). Attacking legality of organization.
- (3). Curative statute.
- 39. — Independent and other districts in incorporated cities, towns, and villages.
- 40. — Rural independent districts and other special organizations.
- 41. — Proceedings for organization.
- 42. De facto districts.
- 43. Unorganized territory.
- 44. Territorial extent and boundaries.
- 45. Alteration and creation of new districts.
- 46. — In general.
- 47. — Change of boundaries.
- 48. — Consolidation, and union districts.
- 49. — Division.
- 50. — Change of organization to or from independent district.
- 51. — Powers of boards or officers, and of courts.
- 52. — Proceedings in general.
  - (1). In general.
  - (2). Meetings and mode of action in general.
  - (3). Petition or consent.
  - (4). Notice and hearing.
  - (5). Evidence.
  - (6). Records, orders, and reports.
- 53. — Submission of question to popular vote.
- 54. — Review of proceedings.
  - (1). In general.
  - (2). Parties; standing.
  - (3). Scope of review.
- 55. — Operation and effect.
- 56. — Adjustment of pre-existing rights and liabilities.
  - (1). In general.
  - (2). Property and funds.
  - (3). Liabilities.
  - (4). Proceedings for apportionment of assets and liabilities.
  - (5). Actions on pre-existing liabilities.
- 57. Formation of districts and annexation and detachment of territory for special purposes.
- 58. — In general.
- 59. — High school and graded school districts.

**II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 60. — Joint districts.
- 61. Enumeration of children for school purposes.
- 62. Dissolution.
- 63. — In general.
- 64. — Proceedings and review.
- 65. — Operation and effect.
- 3. GOVERNMENT AND BOARDS.**
- 70. Administration of school affairs in general.
- 71. — In general.
- 72. — Administrative oversight.
- 73. Constitutional and statutory provisions.
- 74. — In general.
- 75. — Purpose and construction in general.
- 76. — Validity of statutes.
- 77. — Retroactive operation.
- 78. State boards and officers.
- 79. — In general.
- 80. — Appointment and tenure of officers.
- 81. — Powers and duties.
- 82. — Meetings; proceedings.
- 83. — Judicial review.
- 84. County or district boards.
- 85. — In general.
- 86. — Creation and constitution.
- 87. — Appointment or election, qualification, and tenure.
  - (1). In general.
  - (2). Redistricting; Voting Rights Act.
  - (3). Eligibility and qualification.
  - (4). De facto officers.
  - (5). Term, vacancies, and holding over.
  - (6). Grounds for removal or other adverse action.
  - (7). Proceedings and review.
- 88. — Compensation.
  - (1). In general.
  - (2). Reimbursement of expenses; indemnification.
  - (3). Pensions and benefits.
- 89. — Powers and functions in general.
- 90. — Duties and liabilities in general.
- 91. — Criminal responsibility.



**141E. EDUCATION****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 92. — Mode of action.
- 93. — Meetings.
- 94. — Minutes and records.
- 95. — Orders and resolutions.
- 96. — Operation and effect of decisions.
- 97. — Appeals from decisions.
- 98. Officers of towns as school officers.
- 99. District meetings in general.

**4. DISTRICT PROPERTY IN GENERAL.**

- 100. In general.
- 101. Constitutional and statutory provisions.
- 102. Capacity to acquire and hold property.
- 103. Acquisition, use, and disposition of property in general.
- 104. — In general.
- 105. — Proceedings for acquisition.
- 106. — Construction of grant; reversion to grantor.
- 107. — Sale or lease.
- 108. School furniture, books, apparatus, and other appliances.
- 109. Telecommunications and computer equipment.
- 110. School libraries.

**5. SCHOOL BUILDINGS AND GROUNDS.**

- 111. In general.
- 112. Constitutional and statutory provisions.
- 113. Authority and duty to provide.
- 114. Location.
- 115. — In general.
- 116. — Change of site.
- 117. — Proceedings and review.
- 118. Purchase or lease.
- 119. Construction.
- 120. Control and use in general.
- 121. — In general.
- 122. — Religious displays.
- 123. Equal access to facilities.
- 124. — In general.
- 125. — Limited open forum.
- 126. — Access to religious groups.
- 127. — Access to nonreligious groups.
- 128. Care, maintenance, and repairs.
- 129. Closure of school.

**II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 130. Sale or other disposition.
- 131. Charter school facilities.

**6. DISTRICT CONTRACTS.**

- 140. In general.
- 141. Constitutional and statutory provisions.
- 142. — In general.
- 143. — Purpose and construction in general.
- 144. — Validity of statutes.
- 145. — Retroactive operation.
- 146. Capacity of district to contract in general.
- 147. Powers of officers to contract; financial interest.
- 148. Power to bind successors.
- 149. Appropriation or provision for payment as prerequisite of contract.
- 150. Bidding and bid protests.
- 151. — In general.
- 152. — Request for bids.
- 153. — Bidders.
- 154. — Bids.
- 155. — Acceptance or rejection.
- 156. — Award.
- 157. — Bid protests.
- 158. — Bus transportation contracts.
- 159. Contractor bonds.
- 160. — In general.
- 161. — Claims and persons secured.
- 162. — Actions on bonds.
- 163. — Rights and remedies of sureties.
- 164. Making, requisites, and validity.
- 165. Unauthorized or illegal contracts.
- 166. — In general.
- 167. — Ratification.
- 168. Implied contracts.
- 169. Construction and operation.
- 170. — In general.
- 171. — Parties; third-party beneficiaries.
- 172. — Extra costs or expenses.
- 173. Modification and rescission.
- 174. Performance or breach.
- 175. — In general.
- 176. — Miscellaneous acts or conduct constituting breach.
- 177. — Bus transportation contracts.

**141E. EDUCATION****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 178. Rights and remedies of contractors.
- 179. Rights and remedies of third parties.
- 180. Rights and remedies of district.

**7. DISTRICT LIABILITIES IN GENERAL.**

- 190. In general.
- 191. Constitutional and statutory provisions.
- 192. District expenses and charges.
- 193. Liabilities specially imposed by statute.
- 194. Torts in general.
- 195. Liability in general.
- 196. Duty and standard of care.
- 197. Liability for acts of employees, and respondeat superior.
- 198. Negligent hiring, supervision, retention, or training.
- 199. Immunity in general.
- 200. Governmental or proprietary functions in general.
- 201. Particular injuries.
- 202. — In general.
- 203. — Premises liability.
- 204. — Intentional torts in general.
- 205. — Nuisance.
- 206. — Other particular injuries to persons other than students or teachers.

**8. SCHOOL AID AND FUNDING.**

- 210. In general.
- 211. Constitutional and statutory provisions.
- 212. — In general.
- 213. — Purpose and construction in general.
- 214. — Validity of statutes.
- 215. — Retroactive operation.
- 216. Creation of funds.
- 217. Investment and administration.
- 218. Apportionment and disbursement.
- 219. — In general.
- 220. — Federal aid.
- 221. — Apportionment according to school attendance.
- 222. — Enumeration of children as basis of apportionment.
- 223. — Schools in cities.
- 224. — Funding insurance of school property.

**II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 225. — Illegal apportionment or disbursement.
- 226. Desegregation funding.
- 227. Aid to charter schools.
- 228. Aid for special education.

**9. ADMINISTRATION OF FINANCES; INDEBTEDNESS.**

- 230. In general.
- 231. Constitutional and statutory provisions.
- 232. — In general.
- 233. — Purpose and construction in general.
- 234. — Validity of statutes.
- 235. — Retroactive operation.
- 236. Power to incur indebtedness and expenditures in general.
- 237. Limitation of amount.
- 238. — In general.
- 239. — Computation.
- 240. Submission of question to popular vote.
- 241. Borrowing money in general.
- 242. Aid to corporations and stock subscriptions.
- 243. Power to make public improvements.
- 244. Effect of invalidity of debt or expenditure.
- 245. Administration of finances in general.
- 246. — In general.
- 247. — Custody of funds in general.
- 248. — Deposits in banks.
- 249. — Reports and statements; budgeting.
- 250. Appropriations.
- 251. Payment of indebtedness in general.
- 252. Warrants, orders, and certificates of indebtedness.
- 253. — In general.
- 254. — Issuance, requisites, and validity.
- 255. — Construction and operation in general.
- 256. — Negotiability and transfer.
- 257. — Payment.
- 258. — Rights and remedies of holders.
- 259. Bills and notes.
- 260. Bonds.
- 261. — In general.

**141E. EDUCATION****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 262. — Authority to issue bonds in general.
- 263. — Funding indebtedness.
- 264. — Limitation of amount.
- 265. — Conditions precedent and preliminary proceedings.
  - (1). In general.
  - (2). Submission of question to popular vote.
  - (3). Provision for payment.
  - (4). Proceedings to determine validity of bonds.
- 266. — Sale or other disposition of bonds by school district.
- 267. — Form, execution, and issuance of bonds.
- 268. — Construction and operation.
- 269. — Validity of bonds in general.
- 270. — Ratification and estoppel.
- 271. — Payment and redemption.
- 272. — Rights and remedies of holders.

**10. SCHOOL TAXES.**

- 280. In general.
- 281. Constitutional and statutory provisions.
- 282. — In general.
- 283. — Purpose and construction in general.
- 284. — Validity of statutes.
- 285. — Retroactive operation.
- 286. Power and duty to tax.
- 287. Purposes and grounds.
- 288. Amount of tax.
- 289. Persons and property liable.
- 290. — In general.
- 291. — Exemptions.
- 292. Levy and assessment.
- 293. — In general.
- 294. — Making, requisites, and validity in general.
- 295. — Time and order of levy.
- 296. — Submission of question to popular vote.
- 297. — Statement of purpose of tax.
- 298. — Certificates, estimates, and determination of rate or amount of levy.
- 299. — Equalization and review of assessment.

**II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 300. Lien.
- 301. Payment.
- 302. Collection and enforcement of school taxes in general.
- 303. — In general.
- 304. — Authority to collect and failure to collect.
- 305. — Contracts for collection.
- 306. — Collectors.
  - (1). In general.
  - (2). Compensation, commissions, and expenses.
  - (3). Accounting for taxes collected.
  - (4). Official bonds.
  - (5). Criminal responsibility.
- 307. Personal liability for taxes.
- 308. Summary remedies.
- 309. Equitable remedy.
- 310. Action for taxes.
- 311. — In general.
- 312. — Persons entitled to sue.
- 313. — Right of action and defenses.
- 314. — Process and appearance.
- 315. — Time to sue and limitations.
- 316. — Parties.
- 317. — Pleading.
- 318. — Evidence.
- 319. — Trial.
- 320. — Judgment.
- 321. — Review.
- 322. Remedies for wrongful enforcement.
- 323. — In general.
- 324. — Injunction.
- 325. Proceedings for judgment against real property.
  - 326. — In general.
  - 327. — Process and appearance.
  - 328. — Pleading.
  - 329. — Evidence.
  - 330. — Trial.
  - 331. — Judgment.
  - 332. — Review.
  - 333. — Costs.
  - 334. Sale of land.
  - 335. — In general.
  - 336. — Notice.

**141E. EDUCATION****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 337. — Purchase by county, city, or district; compromise of tax.
- 338. — Validity of sale.
- 339. — Deficiency after sale.
- 340. Tax titles.
- 341. — In general.
- 342. — Rights of purchaser.
- 343. — Deeds.
- 344. Redemption.
- 345. Penalties and interest.
- 346. — In general.
- 347. — Abatement.
- 348. Remedies for erroneous taxation.
- 349. Assessments and special taxes for particular purposes.
- 350. — In general.
- 351. — School buildings and sites.
- 352. — High schools or graded schools.
- 353. — Payment of indebtedness.
- 354. Poll taxes.
- 355. Disposition of proceeds of taxes and other revenue.

**11. CLAIMS AGAINST DISTRICT.**

- 360. In general.
- 361. Constitutional and statutory provisions.
- 362. Notice, demand, or presentation of claim.
- 363. — In general.
- 364. — Service or presentation; timeliness.
- 365. — Excuses for, and relief from, delay or failure.
- 366. — Form and sufficiency.
- 367. — Waiver and estoppel.
- 368. Audit and allowance.
- 369. Review of action on claims.
- 370. Making or presentation of false claims.

**12. ACTIONS IN GENERAL.**

- 372. In general.
- 373. Constitutional and statutory provisions.
- 374. Capacity to sue or be sued.
- 375. Employment of counsel.
- 376. Rights of action and defenses.
- 377. Conditions precedent.
- 378. Jurisdiction and venue.

**II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 379. Time to sue and limitations.
- 380. Parties; use of name of district or of officers.
- 381. Process and appearance.
- 382. Pleading.
- 383. Evidence.
- 384. Trial.
- 385. Judgment.
- 386. Execution and enforcement of judgment.
- 387. Costs and fees.

**(B) TAXPAYERS' SUITS AND OTHER REMEDIES.**

- 390. In general.
- 391. Constitutional and statutory provisions.
- 392. Restraining action by board or officers.
- 393. — In general.
- 394. — Unauthorized or illegal acts.
- 395. — Incurring indebtedness or expenditure.
- 396. — Acquisition, use, and disposition of property.
- 397. — Misapplication of funds.
- 398. Compelling action by board or officers.
- 399. Actions.
- 400. — In general.
- 401. — Time to sue and limitations.
- 402. — Conditions precedent in general.
- 403. — Requesting board or officers to bring action.
- 404. — Pleading and motions.
- 405. — Evidence.
- 406. — Costs and fees.

**(C) OFFICERS AND EMPLOYEES.**

- 410. In general.
- 411. Appointment and tenure.
- 412. — In general.
- 413. — Eligibility and qualification.
- 414. — Certificate or license.
- 415. — Employment contracts.
- 416. — Tenured status.
- 417. — Term of office, vacancies, and holding over.
- 418. — Grounds for removal or other adverse action.
- 419. — Principals.
- 420. — Proceedings and review.

**141E. EDUCATION****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 421. Title to and possession of office.
- 422. Powers and functions in general.
- 423. Duties and liabilities in general.
- 424. Liability for school funds.
- 425. Liabilities on official bonds.
- 426. Criminal responsibility.
- 427. Compensation.
- 428. — In general.
- 429. — Reimbursement of expenses; indemnification.
- 430. — Pensions and benefits.
- 431. Charter school employees.
- 432. Actions.

**(D) TEACHERS AND EDUCATION PROFESSIONALS.****1. IN GENERAL.**

- 440. In general.
- 441. Constitutional and statutory provisions.
- 442. — In general.
- 443. — Purpose and construction in general.
- 444. — Validity of statutes.
- 445. — Retroactive operation.
- 446. Regulation in general.
- 447. Teacher training.
- 448. Certificate or license.
- 449. — In general.
- 450. — Qualification; examination.
- 451. — Requisites to appointment or employment.
- 452. — Revocation or suspension.
  - (1). In general; grounds.
  - (2). Proceedings and review.
- 453. Employment in general.
- 454. Selection and appointment.
- 455. — In general.
- 456. — Eligibility and qualification.
- 457. — Nomination by district boards.
- 458. — Recommendation by superintendent.
- 459. — Civil service laws and examinations.
- 460. Term of employment in general.
- 461. Leave of absence.
- 462. — In general.
- 463. — Sabbatical.
- 464. Contracts of employment.

**II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 465. — In general.
- 466. — Making, requisites, and validity.
  - (1). In general.
  - (2). Authority to contract in general.
  - (3). Authority to bind successors.
  - (4). Requisites and validity in general.
  - (5). Formal requisites.
  - (6). Ratification and estoppel.
- 467. — Construction and operation.
- 468. — Performance or breach.
- 469. — Remedies for enforcement.
- 470. Resignation or abandonment.
- 471. — In general.
- 472. — Acceptance and withdrawal.
- 473. Duties and liabilities.
- 474. — In general.
- 475. — Immunity.
- 476. — Supervision of pupils in general.
- 477. — Extracurricular activities.
- 478. — Criminal responsibility.
- 479. Rules and regulations.

**2. TENURE; CONTINUING CONTRACT STATUS.**

- 490. In general.
- 491. Constitutional and statutory provisions.
- 492. — In general.
- 493. — Purpose of statutes.
- 494. — Construction and operation in general.
- 495. Persons entitled.
- 496. Substitute teachers.
- 497. Length of service and probation.
- 498. — In general.
- 499. — Calculation of probationary period.
- 500. — Tenure by estoppel.
- 501. Schools affected.
- 502. Effect of attaining tenure.
- 503. Retention or waiver of rights.
- 504. Abrogation or modification of rights.
- 505. Proceedings and review.

**3. COMPENSATION.**

- 510. In general.
- 511. Constitutional and statutory provisions.
- 512. — In general.
- 513. — Purpose and construction in general.

**141E. EDUCATION****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 514. — Validity of statutes.
- 515. — Retroactive operation.
- 516. Effect of closing of school.
- 517. Overtime compensation.
- 518. Compensation during absence.
- 519. Compensation on removal, suspension, or resignation.
- 520. Reimbursement of expenses; indemnification.
- 521. Rate or amount of compensation.
- 522. — In general.
- 523. — Salary schedules and minimums.
- 524. — Service credit.
- 525. — Increases, bonuses, and reductions.
- 526. Payment, and orders therefor.
- 527. Actions to recover compensation.
- 528. — In general.
- 529. — Time to sue and limitations.
- 530. — Parties.
- 531. — Pleading.
- 532. — Evidence.
- 533. — Trial and judgment.

**4. PENSIONS AND BENEFITS.**

- 540. In general.
- 541. Funds and contributions.
- 542. Eligibility for, and right to pension or benefits in general.
- 543. Insurance.
- 544. Disability benefits.
- 545. Death benefits.
- 546. Amount and computation in general.
- 547. Service credit.
- 548. Application and proceedings.
- 549. — In general.
- 550. — Time for filing.
- 551. — Evidence.
- 552. — Review.
- 553. Revocation or suspension.
- 554. — In general.
- 555. — Proceedings and review.

**5. ADVERSE PERSONNEL ACTIONS.**

- 560. In general; authority to take adverse action.
- 561. Constitutional and statutory provisions.
- 562. Types of adverse action.

**II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 563. — In general.
- 564. — Dismissal or nonrenewal.
- 565. — Demotion or nonpromotion.
- 566. — Transfer or reassignment.
- 567. — Constructive discharge.
- 568. — Desegregation and consequent adverse action.
- 569. — Other types.
- 570. Effect of tenure or lack thereof.
- 571. Grounds for adverse action.
- 572. — In general.
- 573. — Conduct unbecoming a teacher in general.
- 574. — Abolition of position; reduction in staff.
- 575. — Classroom performance; incompetency.
- 576. — Unauthorized or excessive absence.
- 577. — Insubordination.
- 578. — Immoral or criminal conduct in general.
- 579. — Corporal punishment; excessive force.
- 580. — Sexual misconduct.
- 581. — Age; mandatory retirement.
- 582. — Marital status.
- 583. — Pregnancy; maternity leave.
- 584. — Exercise of rights; retaliation.
  - (1). In general.
  - (2). Protected activities in general.
  - (3). Motive, intent, and pretext.
  - (4). Causation.
- 585. — Reporting or opposing wrongdoing; criticism and “whistleblowing”.
- 586. — Other particular grounds.
- 587. — Remediable grounds; necessity of warnings.
- 588. Charter school teachers.
- 589. Proceedings.
- 590. — In general.
- 591. — Settlements.
- 592. — Time; continuance.
- 593. — Notice and statement of reasons or grounds.
  - (1). In general.
  - (2). Nonrenewal.
- 594. — Discovery.

**141E. EDUCATION****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 595. — Medical examination.
- 596. — Hearing officer or panel.
- 597. — Right to hearing.
- 598. — Conduct of hearing.
- 599. — Right to counsel.
- 600. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Nonrenewal.
  - (4). Weight and sufficiency.
- 601. — Determination.
- 602. — Administrative review.
- 603. — Judicial review.
  - (1). In general.
  - (2). Time for review.
  - (3). Review on certiorari.
  - (4). Scope of review.
  - (5). Determination and disposition.
  - (6). Further appellate review.
- 604. Actions.
- 605. — In general.
- 606. — Immunity.
- 607. — Wrongful dismissal.
- 608. — Exhaustion of remedies.
- 609. — Time to sue and limitations.
- 610. — Parties.
- 611. — Pleadings.
- 612. — Evidence.
  - (1). In general.
  - (2). Weight and sufficiency.
- 613. — Trial.
- 614. — Damages.
- 615. — Costs and fees.
- 616. Reinstatement; back pay.
- 617. — In general.
- 618. — Reemployment preference; recall list.
- 619. — Proceedings and review.

**6. INJURIES TO AND LIABILITY THEREFOR.**

- 630. In general.
- 631. Duty and standard of care in general.
- 632. Premises liability.
- 633. Injuries caused by students.
- 634. Other particular injuries.
- 635. Actions.

**II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 636. — In general.
- 637. — Conditions precedent.
- 638. — Jurisdiction and venue.
- 639. — Time to sue and limitations.
- 640. — Parties.
- 641. — Process and appearance.
- 642. — Pleading.
- 643. — Evidence.
- 644. — Trial.
- 645. — Judgment.
- 646. — Execution and enforcement of judgment.
- 647. — Costs and fees.

**(E) PUPILS OR STUDENTS.****1. IN GENERAL.**

- 650. In general.
- 651. Constitutional and statutory provisions.
- 652. — In general.
- 653. — Purpose and construction in general.
- 654. — Validity of statutes.
- 655. — Retroactive operation.
- 656. Right to instruction in general.
- 657. Homeless children.
- 658. Eligibility.
- 659. — In general.
- 660. — Age.
- 661. — Residence.
  - (1). In general.
  - (2). Child not residing with parent or guardian.
- 662. — Marital status; pregnancy.

**2. ADMISSION AND ATTENDANCE.**

- 670. In general.
- 671. Assignment or admission to particular schools.
- 672. — In general.
- 673. — Transfers.
- 674. — Preparatory high school.
- 675. — Proceedings to compel admission.
- 676. Health regulations.
- 677. — In general.
- 678. — Exclusion of child with contagious disease.
- 679. — Availability of prophylactics.

**141E. EDUCATION****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 680. — Vaccination.
  - (1). In general.
  - (2). Existence of epidemic.
- 681. Payment for tuition and fees.
- 682. — In general.
- 683. — Nonresident pupils or transfers.
- 684. — Rate and amount.
- 685. — Actions.
- 686. Compulsory attendance.
- 687. — In general.
- 688. — Criminal liability of parent or guardian.
- 689. — Exceptions.
  - (1). In general.
  - (2). Marriage.
  - (3). Private schools.
  - (4). Religious belief.
  - (5). Other exceptions.
- 690. Truancy.
- 691. — In general.
- 692. — Nature of liability.
- 693. — Truant officers.
- 694. — Truant schools.
- 695. — Liability of parents.
- 696. School terms, vacations, and holidays.
- 697. Grade levels and departments.
- 698. Home schooling.
- 699. — In general.
- 700. — Standards and eligibility.
- 701. — Proceedings and review.

**3. CURRICULUM AND INSTRUCTION.**

- 710. In general.
- 711. Judicial supervision in general.
- 712. Advanced placement.
- 713. Telecommunications; computerized instruction.
- 714. Foreign language instruction.
- 715. Remedial instruction for limited English proficiency; bilingual education.
- 716. Gifted children programs.
- 717. Health or sex education.
- 718. Vocational education.
- 719. Textbooks and instructional materials.
- 720. — In general.
- 721. — Selection or adoption and change.
- 722. — Duty to furnish.

**II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 723. Religious instruction and reading of religious texts.
- 724. — In general.
- 725. — Prayer and meditation.
- 726. — Sectarian texts and instruction.
- 727. — Teaching religiously objectionable subjects.
- 728. — Evolution and creationism.

**4. CONTROL AND DISCIPLINE.**

- 730. In general.
- 731. Authority in general.
- 732. Regulation of conduct.
- 733. — In general.
- 734. — Authority to make rules.
- 735. — Reasonableness and validity in general.
- 736. — Construction and operation.
- 737. Violation of rules and offenses in general.
- 738. Interrogation by school personnel.
- 739. Speech and assembly; demonstrations.
- 740. Grooming and dress.
- 741. Possession or use of contraband.
- 742. Searches and seizures.
- 743. — In general.
- 744. — Warrantless searches; reasonable suspicion.
- 745. — Searches and testing for drugs and alcohol.
- 746. Punishment.
- 747. — In general.
- 748. — Academic sanctions.
- 749. — Restrictions on extracurricular activities.
- 750. — Corporal punishment.
- 751. — Expulsion or suspension.
  - (1). In general.
  - (2). Grounds.
- 752. Proceedings in general.
- 753. Right to counsel.
- 754. Notice and hearing.
- 755. Evidence.
- 756. Confrontation and cross-examination of witnesses.
- 757. Determination and disposition; interim placement.
- 758. Review.



**141E. EDUCATION****5. EXTRACURRICULAR ACTIVITIES.**

- 760. In general.
- 761. Eligibility in general.
- 762. — In general.
- 763. — Marital status; pregnancy.
- 764. Student organizations and government.
- 765. Athletics.
- 766. — In general.
- 767. — Eligibility.
- 768. — Discipline; dismissal from team.
- 769. Publications.

**6. TRANSPORTATION.**

- 770. In general.
- 771. Determination of distance from school.
- 772. Transportation to private schools or beyond district.
- 773. Transportation for extracurricular activities.
- 774. Proceedings to compel transportation.

**7. GRADUATION AND DIPLOMA.**

- 780. In general.
- 781. Academic requisites in general.
- 782. Grades and credits.
- 783. Competency testing.
- 784. Ceremony.

**8. INJURIES TO PUPILS OR STUDENTS.**

- 790. In general.
- 791. Torts in general.
- 792. — In general.
- 793. — Duty and standard of care.
- 794. — Liability as insurer of safety; strict liability.
- 795. — Duty to supervise students.
- 796. — Liability for acts of employees, and respondeat superior.
- 797. — Negligent hiring, supervision, retention, or training.
- 798. — Immunity in general.
- 799. — Governmental or proprietary functions.
- 800. Particular injuries.
- 801. — In general.
- 802. — Field trips and other off-premises injuries in general.
- 803. — Educational malpractice.
- 804. — Premises liability.
  - (1). In general.

**II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- (2). Outside grounds in general.
- (3). Buildings in general.
- (4). Doors, entrances, and panels.
- (5). Slips and falls in general.
- (6). Steps, stairs, and ramps.
- (7). Tools and equipment.
- 805. — Sports, athletics, and recreation.
  - (1). In general.
  - (2). Play and recess in general.
  - (3). Playgrounds, gymnasiums, and physical education.
  - (4). Football.
  - (5). Baseball and softball.
  - (6). Basketball.
  - (7). Swimming and water sports.
  - (8). Cheerleading.
  - (9). Other particular sports.
- 806. — Intentional torts in general.
- 807. — Use of force against or restraint of students; corporal punishment.
- 808. — Duty to protect against intentional injuries.
  - (1). In general.
  - (2). Self-inflicted injuries; suicide.
  - (3). Injuries by other students.
- 809. — Sexual abuse, harassment, or misconduct.
  - (1). In general.
  - (2). By teachers or other employees.
  - (3). By other students.
- 810. — Other particular injuries to students.
- 811. Actions.
- 812. — In general.
- 813. — Conditions precedent.
- 814. — Jurisdiction and venue.
- 815. — Time to sue and limitations.
- 816. — Parties.
- 817. — Process and appearance.
- 818. — Pleading.
- 819. — Evidence.
- 820. — Trial.
- 821. — Judgment.
- 822. — Execution and enforcement of judgment.
- 823. — Costs and fees.

**141E. EDUCATION****(F) RACIAL SEGREGATION AND DESEGREGATION.**

- 830. In general.
- 831. Existence and propriety of segregated system.
- 832. Equality within segregated system.
- 833. Desegregation and integration and duty to desegregate in general.
- 834. De facto or de jure segregation.
- 835. Desegregation plans in general.
- 836. Role of courts.
- 837. Role of federal or statewide agencies and local committees.
- 838. Time for desegregation.
- 839. Justification for delay or failure.
- 840. Step-by-step desegregation; transitional period.
- 841. School location; districts and attendance zones.
- 842. School pairing or clustering.
- 843. Freedom of choice; transfer.
- 844. Disregard of district boundaries.
- 845. Transportation for racial integration; busing.
- 846. Private schools; abandonment or non-support of public system.
- 847. Particular schools; related facilities and activities.
- 848. Actions.
- 849. — In general.
- 850. — Evidence.
- 851. — Judgment and relief in general.
- 852. — Retained jurisdiction; unitary status.
- 853. — Costs and attorney fees.
- 854. — Review.

**(G) CHILDREN WITH DISABILITIES;  
SPECIAL EDUCATION.**

- 860. In general.
- 861. Constitutional and statutory provisions.
- 862. Individualized education program.
- 863. Free appropriate public education.
- 864. "Child find" obligation.
- 865. Stay-put during pendency of review.
- 866. Extended school year services.
- 867. Related services.
- 868. Eligibility; nature of impairment or condition.
- 869. — In general.
- 870. — Behavioral or emotional disorders.

**II. PUBLIC PRIMARY AND SECONDARY  
SCHOOLS.(Cont'd)**

- 871. — Autism.
- 872. — Genetic disorders.
- 873. — Learning disabilities.
- 874. — Other impairments or conditions.
- 875. Assignment or admission to particular schools or programs.
- 876. — In general.
- 877. — Mainstreaming in general.
- 878. — Least restrictive environment.
- 879. — Separate public school.
- 880. — Home care and residential placement.
- 881. — Day school.
- 882. — Private school and out-of-state placement.
- 883. — Tuition reimbursement.
- 884. Administrative proceedings to enforce rights.
- 885. — In general.
- 886. — Settlement agreements; alternative dispute resolution.
- 887. — Proceedings before hearing officer.
- 888. — Administrative review.
- 889. Judicial review or intervention.
- 890. — In general.
- 891. — Parties; standing.
- 892. — Time for proceedings.
- 893. — Exhaustion of remedies.
- 894. — Scope of review.
- 895. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Weight and sufficiency.
- 896. — Determination and disposition.
  - (1). In general.
  - (2). Summary judgment.
- 897. — Further appellate review.
- 898. — Relief.
  - (1). In general; no right to damages.
  - (2). Compensatory education.
  - (3). Injunctions in general.
  - (4). Preliminary injunctions.
  - (5). Costs and attorney fees.
  - (6). — In general.
  - (7). — Prevailing party.
  - (8). — Grounds.

**141E. EDUCATION****II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- (9). — Amount and computation.
- (10). — Proceedings.
- 899. Transportation.
- 900. Control and discipline.
- 901. Expulsion or suspension; interim placement.

**III. PRIVATE PRIMARY AND SECONDARY SCHOOLS.**

- 910. In general.
- 911. Constitutional and statutory provisions.
- 912. — In general.
- 913. — Purpose and construction in general.
- 914. — Validity of statutes.
- 915. — Retroactive operation.
- 916. Establishment and status in general.
- 917. Incorporation and organization.
- 918. Regulation and supervision.
- 919. — In general.
- 920. — Accreditation; licensing.
- 921. — Sectarian institutions.
- 922. Governing boards.
- 923. Officers and employees.
- 924. Property.
- 925. Contracts.
- 926. — In general.
- 927. — Construction and operation.
- 928. — Performance or breach.
- 929. — Contractor's rights and remedies.
- 930. Liabilities.
- 931. — In general.
- 932. — Negligence in general.
- 933. — Immunity in general.
- 934. — Condition of premises.
- 935. — Athletics and physical education.
- 936. — Supervision of other pupils or students.
- 937. — Educational malpractice.
- 938. — Duty to protect against intentional injuries.
  - (1). In general.
  - (2). Hazing.
  - (3). Self-inflicted injuries; suicide.
- 939. — Injuries to persons other than pupils or students.
- 940. Fiscal matters; funds.

**III. PRIVATE PRIMARY AND SECONDARY SCHOOLS.(Cont'd)**

- 941. Public aid.
- 942. — In general.
- 943. — Sectarian institutions.
  - (1). In general.
  - (2). Provision of textbooks and services.
  - (3). Voucher programs and tuition assistance.
- 944. Teachers and other instructors.
- 945. — In general.
- 946. — Certificate or license.
- 947. — Compensation.
- 948. — Duties and liabilities.
- 949. — Removal or other adverse action.
- 950. Pupils or students.
- 951. — In general.
- 952. — Admission and attendance.
- 953. — Tuition and fees.
- 954. — Curriculum and activities.
- 955. — Control and discipline.
- 956. — Punishment; suspension or expulsion.

**IV. INTERSCHOLASTIC ASSOCIATIONS.**

- 960. In general.
- 961. Constitutional and statutory provisions.
- 962. Rules and regulations.
- 963. — In general.
- 964. — Construction and enforcement in general.
- 965. — Eligibility for competition.
- 966. — Suspension from competition.
- 967. — Sanctions against school or coaches.
- 968. Judicial intervention.

**V. POSTSECONDARY PROPRIETARY SCHOOLS; VOCATIONAL AND OTHER PARTICULARIZED TRAINING.**

- 970. In general.
- 971. Constitutional and statutory provisions.
- 972. Driving schools.
- 973. Subject of license.
- 974. Exemptions.
- 975. Regulations in general.
- 976. License fees and taxes.
- 977. Revocation or suspension.

**141E. EDUCATION****V. POSTSECONDARY PROPRIETARY SCHOOLS; VOCATIONAL AND OTHER PARTICULARIZED TRAINING.**(Cont'd)

- 978. Rights and remedies of unlicensed persons and of persons dealing with them.
- 979. Penalties and fines.
- 980. Regulation of recruitment.
- 981. Educational malpractice.

**VI. COLLEGES AND UNIVERSITIES.****(A) ESTABLISHMENT AND REGULATION IN GENERAL.**

- 990. Nature and status in general.
- 991. Constitutional and statutory provisions.
- 992. Incorporation, organization, and location.
- 993. College districts.
- 994. Accreditation; accrediting organizations.
- 995. Dissolution or abandonment.
- 996. Regulation of institution in general.
- 997. — In general.
- 998. — Regulation as condition of public funding.
- 999. — Corporate powers.
- 1000. Judicial supervision in general.

**(B) GOVERNANCE AND BOARDS.**

- 1010. In general.
- 1011. Constitutional and statutory provisions.
- 1012. Governing boards.
- 1013. — In general.
- 1014. — Appointment, qualification, and tenure.
- 1015. — Powers, duties, and liabilities.
- 1016. — Meetings.
- 1017. — Compensation.

**(C) PROPERTY.**

- 1020. In general.
- 1021. Constitutional and statutory provisions.
- 1022. Right to acquire, hold, and convey property.
- 1023. Title to property.
- 1024. Control of property in general.
- 1025. Regulation of campus; conduct of visitors.
- 1026. Sale or disposition of property.

**(D) CONTRACTS.**

- 1030. In general.
- 1031. Constitutional and statutory provisions.
- 1032. Capacity to contract in general.
- 1033. Powers of officers to contract; financial interest.
- 1034. Bidding and bid protests.
- 1035. Contractor bonds.
- 1036. Unauthorized or illegal contracts.
- 1037. Implied contracts.
- 1038. Construction and operation.
- 1039. Modification and rescission.
- 1040. Performance or breach.
- 1041. Rights and remedies of contractors.
- 1042. Rights and remedies of third parties.
- 1043. Rights and remedies of institution.

**(E) LIABILITIES.**

- 1051. In general.
- 1052. Constitutional and statutory provisions.
- 1053. Liabilities specially imposed by statute.
- 1054. Torts and immunity.
- 1055. — In general.
- 1056. — Governmental and proprietary functions in general.
- 1057. — Particular injuries to persons other than students or teachers.
  - (1). In general.
  - (2). Non-faculty employees.
  - (3). Parents and visitors.

**(F) FISCAL MATTERS.**

- 1060. In general.
- 1061. Constitutional and statutory provisions.
- 1062. — In general.
- 1063. — Purpose and construction in general.
- 1064. — Validity of statutes.
- 1065. Funds in general.
- 1066. Endowment; donations.
- 1067. Public aid.
- 1068. — In general.
- 1069. — Support of private institutions, in general.
- 1070. — Sectarian institutions.
- 1071. Administration of finances.
- 1072. Power to incur indebtedness; bonds.
- 1073. Taxes.

**141E. EDUCATION****(G) CLAIMS.**

- 1080. In general.
- 1081. Constitutional and statutory provisions.
- 1082. Notice, demand, or presentation of claim.
- 1083. — In general.
- 1084. — Service or presentation; timeliness.
- 1085. — Excuses for, and relief from, delay or failure.
- 1086. — Form and sufficiency.
- 1087. — Waiver and estoppel.

**(H) ACTIONS.**

- 1090. In general.
- 1091. Capacity to sue or be sued.
- 1092. Rights of action and defenses.
- 1093. Time to sue and limitations.
- 1094. Parties.
- 1095. Process and appearance.
- 1096. Pleading.
- 1097. Evidence.
- 1098. Trial.
- 1099. Judgment.
- 1100. Execution and enforcement of judgment.
- 1101. Costs.

**(I) OFFICERS AND EMPLOYEES.**

- 1110. Officers.
- 1111. — In general.
- 1112. — Appointment, qualification, and tenure.
- 1113. — Powers, duties, and liabilities.
- 1114. — Compensation in general.
- 1115. — Pensions and benefits.
- 1116. Employees.
- 1117. — In general.
- 1118. — Duties and liabilities.
  - (1). In general.
  - (2). Criminal responsibility.
- 1119. — Employment in general.
- 1120. — Graduate student employment or internship.
- 1121. — Eligibility and qualifications.
- 1122. — Compensation.
  - (1). In general.
  - (2). Pensions and benefits.

**VI. COLLEGES AND UNIVERSITIES.(Cont'd)**

- 1123. — Duration of employment and removal or other discipline.
  - (1). In general.
  - (2). Grounds in general.
  - (3). Retaliation; whistleblowing.
  - (4). Proceedings in general.
  - (5). Notice and hearing.
  - (6). Judicial review.

**(J) FACULTY AND EDUCATION PROFESSIONALS.**

- 1130. In general.
- 1131. Constitutional and statutory provisions.
- 1132. — In general.
- 1133. — Purpose and construction in general.
- 1134. — Validity of statutes.
- 1135. — Preemption.
- 1136. Employment in general.
- 1137. Eligibility and qualifications.
- 1138. Duties and liabilities.
- 1139. — In general.
- 1140. — Criminal responsibility.
- 1141. Compensation.
- 1142. — In general.
- 1143. — Pensions and benefits.
  - (1). In general.
  - (2). Disability benefits.
  - (3). Insurance and death benefits.
  - (4). Service credit.
  - (5). Proceedings and review.
- 1144. Duration of employment and removal or other discipline.
- 1145. — In general.
- 1146. — Tenure.
  - (1). In general; eligibility.
  - (2). Revocation.
  - (3). Proceedings and review.
- 1147. — Grounds.
  - (1). In general.
  - (2). Mandatory retirement.
  - (3). Exercise of rights; retaliation.
  - (4). Reporting or opposing wrongdoing; whistleblowing.
  - (5). Law school faculty.
  - (6). Medical school faculty.
- 1148. — Proceedings.
  - (1). In general.
  - (2). Statement of reasons.

**141E. EDUCATION****VI. COLLEGES AND UNIVERSITIES.(Cont'd)**

- (3). Notice and hearing.
- (4). Administrative review.
- 1149. — Judicial review.
  - (1). In general.
  - (2). Exhaustion of remedies.
  - (3). Evidence.
  - (4). Relief in general.
  - (5). Reinstatement and back pay.
- 1150. Injuries to and liability therefor.
- 1151. — In general.
- 1152. — Duty and standard of care in general.
- 1153. — Premises liability.
- 1154. — Injuries caused by students.
- 1155. — Other particular injuries.
- 1156. — Actions.
  - (1). In general.
  - (2). Conditions precedent.
  - (3). Jurisdiction and venue.
  - (4). Time to sue and limitations.
  - (5). Parties.
  - (6). Process and appearance.
  - (7). Pleading.
  - (8). Evidence.
  - (9). Trial.
  - (10). Judgment.
  - (11). Execution and enforcement of judgment.
  - (12). Costs and fees.

**(K) STUDENTS.**

- 1160. In general.
- 1161. Constitutional and statutory provisions.
- 1162. — In general.
- 1163. — Purpose and construction in general.
- 1164. — Validity of statutes.
- 1165. — Preemption.
- 1166. Contractual nature of relationship with institution.
- 1167. Admission or matriculation.
- 1168. — In general.
- 1169. — Transfers.
- 1170. Tuition and fees.
- 1171. — In general.
- 1172. — Tuition waiver or exemption.
- 1173. — Refund.
- 1174. — Residence determination.

**VI. COLLEGES AND UNIVERSITIES.(Cont'd)**

- (1). In general.
- (2). Law or medical school.
- (3). Proceedings and review.
- 1175. Health regulations.
- 1176. Curriculum, degrees, grades, and credits.
- 1177. — In general.
- 1178. — Grades and review thereof.
- 1179. — Distance learning.
- 1180. — Religious instruction.
- 1181. — Graduate students.
- 1182. — Graduation and diploma.
- 1183. — Rescission or revocation of degree.
- 1184. — Transcripts and recommendations.
- 1185. Academic expulsion, suspension, or probation.
- 1186. — In general.
- 1187. — Grounds in general.
- 1188. — Plagiarism or honor code violations.
- 1189. — Graduate students.
- 1190. — Proceedings and review.
- 1191. — Readmission or reinstatement.
- 1192. Extracurricular activities.
- 1193. — In general.
- 1194. — Athletics.
- 1195. — Student organizations and government.
- 1196. — Publications.
- 1197. — Fraternities and sororities.
- 1198. — Hazing; civil liability.
- 1199. Regulation of conduct in general.
- 1200. — In general.
- 1201. — Speech and assembly; demonstrations.
- 1202. — Dormitories or other accommodations.
- 1203. — Expulsion, suspension, or other discipline.
  - (1). In general.
  - (2). Grounds.
  - (3). Proceedings and review.
  - (4). Reinstatement.
- 1204. — Violation of rules and offenses.
  - (1). In general.
  - (2). Hazing offense.

**141E. EDUCATION****VI. COLLEGES AND UNIVERSITIES.(Cont'd)**

- 1205. Injuries to and liability therefor.
- 1206. — In general.
- 1207. — Immunity in general.
- 1208. — Athletics and physical education.
- 1209. — Educational malpractice.
- 1210. — Condition of premises.
  - (1). In general.
  - (2). Buildings and grounds.
  - (3). Dormitories.
- 1211. — Supervision of other students.
- 1212. — Transportation of students.
- 1213. — Duty to protect against intentional injuries.
  - (1). In general.
  - (2). Hazing.
  - (3). Self-inflicted injuries; suicide.
- 1214. — Actions.
  - (1). In general.
  - (2). Conditions precedent.
  - (3). Jurisdiction and venue.
  - (4). Time to sue and limitations.
  - (5). Parties.
  - (6). Process and appearance.
  - (7). Pleading.
  - (8). Evidence.
  - (9). Trial.
  - (10). Judgment.
  - (11). Execution and enforcement of judgment.
  - (12). Costs and fees.

**(L) INTERCOLLEGIATE ASSOCIATIONS.**

- 1220. In general.
- 1221. Constitutional and statutory provisions.
- 1222. Rules and regulations.
- 1223. — In general.
- 1224. — Construction, enforcement, and sanctions.
- 1225. Judicial intervention.

**VII. STUDENT FINANCIAL AID.**

- 1230. In general.
- 1231. Constitutional and statutory provisions.
- 1232. Aid to indigent children.
- 1233. Scholarships.
- 1234. — In general.
- 1235. — Athletic scholarships.
- 1236. — Graduate student fellowship.

**VII. STUDENT FINANCIAL AID.(Cont'd)**

- 1237. — Tuition assistance for professionals in training.
- 1238. Loans.
- 1239. — In general.
- 1240. — Federally guaranteed loans.
- 1241. — Loan insurance.
- 1242. — Collection of loan debt in general.
- 1243. — Discharge or forbearance of obligation.

**142. EJECTMENT****SUBJECTS INCLUDED**

Actions for recovery of specific real property, founded on right of possession and right to damages for being deprived thereof, whether proceeding according to common-law or statutory forms, or by possessory action under the civil law

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto, by and against whom and as to what property they may be maintained

Procedure therein, including incidental recovery, in the same action or in a separate proceeding, for use and occupation, profits, damages, improvements, etc.

Verdict and judgment and enforcement thereof by writ of possession or otherwise

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Adverse possession and statutes of limitation, effect of, see ADVERSE POSSESSION, LIMITATION OF ACTIONS

Disputed title, recovery of possession in special form of action founded on right to damages for trespass, see TRESPASS TO TRY TITLE

Forcible entry, unlawful detainer, etc., actions founded on, see FORCIBLE ENTRY AND DETAINER, LANDLORD AND TENANT

New trial as of right in actions of ejectment, etc., see NEW TRIAL

**142. EJECTMENT**

Particular kinds of property, or particular classes of estates or interests, recovery of possession, see MINES AND MINERALS, PROPERTY IV, LANDLORD AND TENANT, MORTGAGES AND DEEDS OF TRUST, and other specific topics

Real actions in general—

Right of possession, actions founded on, see ENTRY, WRIT OF

Right of property, actions founded on, see REAL ACTIONS

Trespass, actions for damages, see TRESPASS

**I. RIGHT OF ACTION AND DEFENSES,**  
⌘1–35.

**II. JURISDICTION, PARTIES, PROCESS, AND INCIDENTAL PROCEEDINGS,**  
⌘36–61.

**III. PLEADING AND EVIDENCE,**  
⌘62–96.

**IV. TRIAL, JUDGMENT, ENFORCEMENT OF JUDGMENT, AND REVIEW,** ⌘97–123.

**V. DAMAGES, MESNE PROFITS, IMPROVEMENTS, AND TAXES,**  
⌘124–153.

**VI. EQUITABLE EJECTMENT,**  
⌘154–167.

**I. RIGHT OF ACTION AND DEFENSES.**

1. Nature and scope of remedy in general.
2. Statutory provisions and remedies.
3. Possessory or petitory action.
4. Form of action.
5. Existence of other remedy.
6. Property which may be subject of action.
7. Grounds of action in general.
8. Title to support action.
9. — In general.
  - (1). In general.
  - (2). Necessity for title or interest by plaintiff.
  - (3). Sufficiency of title in general.
  - (4). Sufficiency of title as against intruder.
  - (5). Easements or licenses.
  - (6). Fee subject to easement.
  - (7). Title acquired after action brought or demise alleged.
  - (8). Interest in undivided tract.
10. — Adverse possession.

**I. RIGHT OF ACTION AND DEFENSES.(Cont'd)**

11. — Interest in public lands.
12. — Paper title.
13. — Equitable title.
14. — Title by estoppel.
15. — Title from common source.
  - (1). In general.
  - (2). Superiority of title.
  - (3). Admission as to common source.
  - (4). Affidavit of title from common source.
16. Prior possession of plaintiff.
17. Right of plaintiff to possession.
18. Ouster or disseisin, or other acts of defendant.
19. Possession of defendant.
20. Claim of title to or acts of ownership of unoccupied lands.
21. Demand or notice to quit, or other conditions precedent.
22. Defenses.
23. — In general.
24. — Adverse possession.
25. — Title or right of possession of third person.
  - (1). In general.
  - (2). Right to show outstanding title.
  - (3). What constitutes outstanding title in general.
  - (4). Validity of outstanding title.
  - (5). Title from common source.
  - (6). Conveyance or incumbrance.
  - (7). Equitable title in third person.
26. — Equitable defenses in general.
  - (1). In general.
  - (2). What constitutes equitable defense in general.
  - (3). Fraud or invalidity of plaintiff's title.
  - (4). Liens in general.
  - (5). Contract for purchase.
27. — Equitable estoppel.
28. — Set-off and counterclaim.
29. Pendency of other action or proceeding.
30. Abatement on death of party.
31. Successive actions.
32. Cross-actions.
33. Persons entitled to sue.



**142. EJECTMENT****I. RIGHT OF ACTION AND DEFENSES.(Cont'd)**

- 34. Compelling bringing of action.
- 35. Persons against whom action may be brought.

**II. JURISDICTION, PARTIES, PROCESS, AND INCIDENTAL PROCEEDINGS.**

- 36. Jurisdiction of subject-matter.
- 37. Jurisdiction of the person.
- 38. Venue.
- 39. Time to sue and laches.  
*See also LIMITATION OF ACTIONS.*
- 40. Parties plaintiff.
- 41. — In general.
- 42. — Lessor of plaintiff.
- 43. — Joinder.
- 44. Parties defendant.
- 45. — In general.
- 46. — Casual ejector or tenant in possession.
- 47. — Joinder.
- 48. Notice to tenant and entry of consent rule.
- 49. Notice to landlord and leave to defend.
- 50. Intervention and bringing in new parties.
- 51. Substitution of parties.
- 52. Process.
- 53. Declaration and notice as process.
- 54. Appearance.
- 55. Defense bonds.
- 56. Estrepement.
- 57. Injunction.
- 58. Surveys.
- 59. — In general.
- 60. — Amendment or resurvey.
- 61. Notice of pendency of action.

**III. PLEADING AND EVIDENCE.**

- 62. Declaration, complaint, or petition.
- 62.1. — In general.
- 63. — Form and requisites in general.
- 64. — Description of property.
- 65. — Title, estate, and possession of plaintiff.
- 66. — Ouster by and possession of defendant.
- 67. — Demand and notice.
- 68. Plea, answer, and disclaimer.
- 68.1. — In general.

**III. PLEADING AND EVIDENCE.(Cont'd)**

- 69. — Form and requisites in general.
- 70. — Matter in abatement.
- 71. — Disclaimer.
- 72. — Set-off and counterclaim.
- 73. Cross-complaint and answer thereto.
- 74. Replication or reply.
- 75. Demurrer.
- 76. Amended and supplemental pleadings.
- 77. Affidavits accompanying pleadings.
- 78. Delivery or filing of abstract or evidence of title.
- 79. Motions for judgment on pleadings.
- 80. Issues, proof, and variance.
- 80.1. — In general.
- 81. — Issues in general.
- 82. — Necessity of proof of title pleaded.
- 83. — Necessity of proof of title of all coplaintiffs.
- 84. — Evidence admissible under pleadings.
  - (1). In general.
  - (2). Title in general.
  - (3). Possession or right of possession.
  - (4). Identity or description of property.
  - (5). Equitable defenses.
- 85. — Variance between allegations and proof.
- 86. Presumptions and burden of proof.
  - (1). In general.
  - (2). Identity of land.
  - (3). Title.
  - (4). Possession or right to possession.
- 87. Admissibility of evidence.
- 88. — In general.
- 89. — Identity and description of property.
- 90. — Title and right to possession.
  - (1). In general.
  - (2). Grant, conveyance, or deed.
  - (3). Public lands.
  - (4). Sale or purchase under execution.
  - (5). Mortgage.
  - (6). Fraudulent conveyances.
- 91. — Possession and ouster.
- 92. Weight and sufficiency of evidence.
- 93. — In general.
- 94. — Identity and description of property.
- 95. — Title and right to possession.

**142. EJECTMENT****III. PLEADING AND EVIDENCE.(Cont'd)**

- (1). In general.
- (2). Grant, conveyance, or deed.
- (3). Descent or devise.
- (4). Identity of parties in chain of title.
- 96. — Possession and ouster.

**IV. TRIAL, JUDGMENT, ENFORCEMENT OF JUDGMENT, AND REVIEW.**

- 97. Dismissal or nonsuit before trial.
- 97.1. — In general.
- 98. — Voluntary dismissal in general.
- 99. — Dismissal as to one or more codefendants.
- 100. — Involuntary.
- 101. Scope of inquiry and powers of court.
- 102. — In general.
- 103. — On default of defendant.
- 104. Proceedings preliminary to trial.
- 106. Questions for jury in general.
- 107. Submission of issues.
- 108. Dismissal or nonsuit at trial.
- 109. Direction of verdict.
- 110. Instructions.
- 111. Verdict and findings.
  - (.5). In general.
  - (1). Requisites and sufficiency in general.
  - (2). Excessive verdict.
  - (3). Designation or description of property.
  - (4). Designation of title, estate, or interest.
  - (5). Right of possession of plaintiff.
  - (6). Ouster by and possession of defendant.
  - (7). Joint or several verdict.
  - (8). Conditional verdict.
  - (9). Responsiveness to issues.
  - (10). Amendment or correction.
  - (11). Construction and operation.
- 112. New trial on ground of error or irregularity.
- 113. Judgment.
- 113.1. — In general.
- 114. — Form and requisites in general.
- 115. — Partial recovery.
- 116. — For defendant.
- 117. — Operation and effect.

**IV. TRIAL, JUDGMENT, ENFORCEMENT OF JUDGMENT, AND REVIEW.(Cont'd)**

- 118. Execution and enforcement of judgment.
- 119. — In general.
  - (1). In general.
  - (2). Injunction and stay.
- 120. — Writ of possession.
  - (.5). In general.
  - (1). Right to writ in general.
  - (1.5). Form and requisites.
  - (2). Persons subject to ouster.
  - (3). Alias and pluries writs.
  - (4). Time of issuance.
  - (5). Execution and return.
  - (6). Vacating or quashing writ.
- 121. Appeal and error.
- 122. Restitution.
- 123. Costs.

**V. DAMAGES, MESNE PROFITS, IMPROVEMENTS, AND TAXES.**

- 124. Nature and form of remedy for damages in general.
- 125. Statutory provisions as to recovery of damages or mesne profits.
- 126. Nominal damages in action of ejectment.
- 127. Recovery of actual damages or mesne profits in action of ejectment.
- 128. Actions for mesne profits.
- 129. Damages for waste or other injury.
- 130. Interest as element of damages.
- 131. Exemplary damages.
- 132. Measure of damages or profits.
- 133. Injunction or receiver as to rents and profits.
- 134. Allegations and prayers in pleadings as to damages or mesne profits.
- 135. Evidence as to damages, rents, or profits.
- 136. Assessment of damages or mesne profits.
- 137. Verdict and findings as to damages or mesne profits.
- 138. Judgment for damages or mesne profits and enforcement thereof.
- 139. Rights of parties as to improvements in general.
- 140. Statutory provisions as to improvements or taxes.

**142. EJECTMENT****V. DAMAGES, MESNE PROFITS,  
IMPROVEMENTS, AND  
TAXES.(Cont'd)**

- 141. Improvements for which compensation may be claimed.
- 142. Grounds for compensation for improvements or taxes paid.
  - (1). In general.
  - (2). Title and possession to support claim in general.
  - (3). Color of title and adverse possession.
  - (4). Bona fides of occupation or claim.
- 143. Set-off of improvements or taxes against damages or mesne profits.
- 144. Charge of improvements or taxes on property recovered.
- 145. Measure of compensation for improvements.
- 146. Pleading improvements or payment of taxes.
- 147. Evidence as to improvements or taxes.
- 148. Proceedings for allowance for improvements or taxes.
- 149. Verdict and findings as to improvements or taxes.
- 150. Provisions of judgment as to improvements or taxes and enforcement thereof.
- 151. Election to take value of land.
- 152. Appeal and error.
- 153. Costs.

**VI. EQUITABLE EJECTMENT.**

- 154. Nature and scope of remedy.
- 155. Statutory provisions.
- 156. Grounds and defenses.
- 157. Jurisdiction of equity.
- 158. Limitations and laches.  
*See also LIMITATION OF ACTIONS.*
- 159. Parties.
- 160. Process.
- 161. Pleading.
- 162. Evidence.
- 163. Hearing or trial.
- 164. Relief awarded.
- 165. Judgment or decree and enforcement thereof.
- 167. Costs.

**142T. ELECTION LAW****SUBJECTS INCLUDED**

Choice by popular vote at general or special elections of public officers  
 Election districts, boards, and election officers  
 Nature of right of suffrage and regulation of its exercise in general  
 Constitutional and statutory provisions relating thereto  
 Qualifications and registration of voters  
 Political activity by public employees  
 Political party organization  
 Campaign finance regulation  
 Nominations and primaries  
 Ordering or calling elections, regular or special, and notice thereof  
 Time, place, and manner of voting, including ballots, ascertaining results, and making returns and canvassing  
 Effect of irregularities or defects  
 Effect of illegal acts and practices  
 Proceedings to contest result  
 Discrimination and the Voting Rights Act  
 Elections law offenses and prosecutions  
 Ballot measures in general

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Apportionment and reapportionment of particular bodies, see MUNICIPAL CORPORATIONS ⇨80, COUNTIES ⇨38, EDUCATION, STATES ⇨27, and UNITED STATES ⇨216  
 Corporations and other private associations, election of officers, see CORPORATIONS AND BUSINESS ORGANIZATIONS and other specific topics  
 Election contests for legislative seats, as determined by legislature itself, see MUNICIPAL CORPORATIONS, STATES, and UNITED STATES  
 Elections on proposed state constitutional amendment, see CONSTITUTIONAL LAW ⇨540  
 Electoral college, see UNITED STATES ⇨25  
 Eligibility to run for public office, see PUBLIC EMPLOYMENT and specific governmental topics

**142T. ELECTION LAW**

Initiative and referendum for ordinances, see MUNICIPAL CORPORATIONS and COUNTIES

Initiative and referendum for statutes, see STATUTES

Injunctions as to elections, see INJUNCTIONS

Lobbying, see LOBBYING

Officers, election or appointment by legislative or other bodies, boards, etc., see PUBLIC EMPLOYMENT, MUNICIPAL CORPORATIONS, COUNTIES, and other specific topics dealing with particular bodies or officers

Particular questions, determination by popular vote, including bond elections, see ALCOHOLIC BEVERAGES, EDUCATION, and other specific topics

Political rights and discrimination in general, see CONSTITUTIONAL LAW

Presidential Election Campaign Fund Act, see UNITED STATES

Recall of elected officials, see PUBLIC EMPLOYMENT

Regulation of elections to Congress, see UNITED STATES

Regulation of elections to territorial legislature, see TERRITORIES ¶19

Tribal officers, election of, see INDIANS ¶217

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**I. IN GENERAL, ¶1–9.**

**II. ELECTION DISTRICTS, BOARDS, AND OFFICERS, ¶10–39.**

**III. VOTERS, ¶40–139.**

(A) IN GENERAL; RIGHT OF SUFFRAGE, ¶40–59.

(B) QUALIFICATIONS, ¶60–99.

(C) REGISTRATION, ¶100–139.

**IV. POLITICAL ACTIVITY AND ASSOCIATIONS, ¶140–169.**

(A) IN GENERAL, ¶140–159.

(B) POLITICAL ORGANIZATIONS; PARTIES, ¶160–169.

**V. CONTRIBUTIONS AND EXPENDITURES; CAMPAIGN FINANCE, ¶170–229.**

**VI. NOMINATIONS, ¶230–279.**

**VII. CONDUCT OF ELECTION, ¶280–589.**

(A) IN GENERAL, ¶280.

(B) ORDERING OR CALLING ELECTION; NOTICE, ¶281–309.

(C) BALLOTS, ¶310–359.

**VII. CONDUCT OF ELECTION—Cont'd**

(D) TIME, PLACE, AND MANNER OF VOTING, ¶360–419.

(E) DETERMINATION AND DECLARATION OF RESULT, ¶420–459.

(F) EFFECT OF IRREGULARITIES OR DEFECTS, ¶460–489.

(G) EFFECT OF ILLEGAL ACTS AND PRACTICES, ¶490–509.

(H) ACTIONS AND PROCEEDINGS; ELECTION CONTESTS, ¶510–589.

**VIII. DISCRIMINATION; VOTING RIGHTS ACT, ¶590–639.**

**IX. BALLOT MEASURES; INITIATIVE AND REFERENDUM IN GENERAL, ¶640–679.**

**X. OFFENSES AND PROSECUTIONS, ¶680–731.**

(A) IN GENERAL, ¶680–709.

(B) PROSECUTIONS, ¶710–731.

**I. IN GENERAL.**

1. In general.
2. What is an “election”.
3. Public policy in general.
4. Purpose of elections.
5. Penalties and actions therefor.

**II. ELECTION DISTRICTS, BOARDS, AND OFFICERS.**

10. In general.
11. Nature and status of districts or precincts.
12. Constitutional and statutory provisions.
13. — In general; power to regulate election officers and boards.
14. — Purpose and construction in general.
15. — Retroactive operation.
16. Creation and alteration of districts or precincts.
17. Reapportionment in general.
18. Creation and abolition of boards of elections.
19. Creation and abolition of offices.
20. Appointment and tenure of officers.
21. — In general.
22. — Eligibility.
23. — Qualification; oath.
24. — Representation of political parties.
25. — Removal and discipline.
26. Compensation of officers.

**142T. ELECTION LAW****II. ELECTION DISTRICTS, BOARDS,  
AND OFFICERS.(Cont'd)**

- 27. Powers and proceedings of board of elections.
- 28. Powers and duties of officers in general.
- 29. Defects in appointment, ineligibility, or disqualification of officers.
- 30. Irregularities or misconduct of officers.
- 31. Liabilities of officers.
- 32. Actions against officers.

**III. VOTERS.****(A) IN GENERAL; RIGHT OF SUFFRAGE.**

- 40. In general.
- 41. Nature and source of right.
- 42. Right to vote effectively.
- 43. Relationship of right to vote and right to hold office.
- 44. Power to confer and regulate.
- 45. — In general.
- 46. — Congress.
- 47. — State legislatures.
- 48. — Local government.
- 49. — Territorial legislatures.
- 50. Statutory provisions conferring or defining right.
- 51. — In general.
- 52. — Constitutionality and validity.
- 53. — Construction and operation.
  - (1). In general.
  - (2). Liberal or strict construction.
- 54. Power to restrict or extend suffrage.
- 55. — In general.
- 56. — Limitation as to number of candidates or propositions to be voted for.
- 57. — Cumulative voting.

**(B) QUALIFICATIONS.**

- 60. In general.
- 61. Constitutional and statutory provisions.
- 62. — In general; power to regulate qualifications.
- 63. — Purpose and construction in general.
- 64. — Retroactive operation.
- 65. Primary election voters.
- 66. — In general.
- 67. — Closed or open primary.
- 68. Age.

**III. VOTERS.(Cont'd)**

- 69. Mental competency.
- 70. Citizenship.
- 71. — In general.
- 72. — Aliens having made declaration of intention to become citizens.
- 73. — Resident aliens.
- 74. Residence.
- 75. — In general.
- 76. — Sufficiency in general.
- 77. — Duration of residency.
- 78. — Change in general.
- 79. — Employment in public service.
- 80. — Employment in navigation.
- 81. — Students.
- 82. — Inmates of public institutions.
- 83. — Places under jurisdiction of United States.
- 84. Property.
- 85. — In general.
- 86. — General elections.
- 87. — Special or local elections.
- 88. — Transfers for purpose of qualification.
- 89. Payment of taxes.
- 90. Education; literacy.
- 91. Religious belief.
- 92. Disqualification.
- 93. Forfeiture of citizenship and disfranchisement.
- 94. — In general.
- 95. — Deprivation of citizenship.
- 96. — Conviction of crime.
- 97. — Bribery.
- 98. — Betting on election.
- 99. — Restoration to citizenship.

**(C) REGISTRATION.**

- 100. In general.
- 101. Constitutional and statutory provisions.
- 102. — In general; power to regulate registration.
- 103. — Purpose and construction in general.
- 104. — Retroactive operation.
- 105. State authority.
- 106. Elections subject to registration laws.
- 107. Nature and necessity of registration.
- 108. Registration officers.

**142T. ELECTION LAW****III. VOTERS.(Cont'd)**

- 109. — In general.
- 110. — Appointment, qualification and tenure in general.
- 111. — Representation of political parties.
- 112. — Compensation.
- 113. — Powers and functions in general.
- 114. — Liabilities.
- 115. Time for registration.
- 116. Place for registration; registration agencies.
- 117. Proceedings for registration.
- 118. — In general.
- 119. — Registration for federal elections.
- 120. — Regulation of third-party registration.
- 121. — Concurrent registration.
- 122. — Proof of identity and eligibility.
- 123. — Absentee registration.
- 124. Compelling registration.
- 125. Correction of lists.
- 126. Challenges to voters on list.
- 127. Filing or posting lists.
- 128. Custody and disposition of registration lists or books.
- 129. Inspection or copy of lists.
- 130. Review by courts of proceedings of registration officers.
- 131. Conclusiveness and effect in general.
- 132. Effect of irregularities or defects.
- 133. — In general.
- 134. — Right to vote.
- 135. — Validity of votes or of election.
- 136. Fraudulent or false registration.
- 137. Right to vote of persons not registered.
- 138. Transfer of registration.

**IV. POLITICAL ACTIVITY AND ASSOCIATIONS.****(A) IN GENERAL.**

- 140. In general.
- 141. Constitutional and statutory provisions.
- 142. — In general.
- 143. — Purpose and construction in general.
- 144. — Retroactive operation.
- 145. Political activity by public employees.
- 146. — In general; eligibility for office.
- 147. — Covered employees.

**IV. POLITICAL ACTIVITY AND ASSOCIATIONS.(Cont'd)**

- 148. — Partisan or nonpartisan office.
- 149. — Removal or discipline of employees.
  - (1). In general.
  - (2). Proceedings and review.

**(B) POLITICAL ORGANIZATIONS; PARTIES.**

- 160. In general.
- 161. Constitutional and statutory provisions.
- 162. Recognized party status.
- 163. Membership.
- 164. Appointment or election and removal of officers.
- 165. Rights and powers of parties and party committees.
- 166. Judicial supervision in general.
- 167. Actions by or against parties or party committees.

**V. CONTRIBUTIONS AND EXPENDITURES; CAMPAIGN FINANCE.**

- 170. In general.
- 171. Constitutional and statutory provisions.
- 172. — In general; power to regulate campaign finance.
- 173. — Purpose and construction in general.
- 174. — Retroactive operation.
- 175. Ordinances and charters.
- 176. Public financing; matching funds.
- 176.5. Presidential campaign funding.
- 177. Contributions in general.
- 178. Regulation of particular donors.
- 179. — In general.
- 180. — Corporations.
- 181. — Labor organizations.
- 182. — Public employees.
- 183. — Foreign nationals.
- 184. — Party contributions during primary.
- 185. Solicitation of contributions.
- 186. Limitations on amount of contributions.
- 187. Use of contributions and funds.
- 188. Expenditures in general.
- 189. Limitations on amount of expenditures.
- 190. Campaign literature, publicity, or advertising.
- 191. — In general.
- 192. — Illegal publicity or advertising.

**142T. ELECTION LAW****V. CONTRIBUTIONS AND EXPENDITURES;  
CAMPAIGN FINANCE.(Cont'd)**

- 193. — Fair campaign practices; false statements.
- 194. — Candidate debates.
- 195. — Independent communications; express advocacy.
- 196. — Anonymous communications.
- 197. — Misrepresentation of campaign authority.
- 198. Disclosure and reporting requirements.
- 199. — In general.
- 200. — Candidate's campaign committee.
- 201. — Self-financing candidate.
- 202. — Disclosure of independent expenditures.
  - (1). In general.
  - (2). Political action committees or issue committees.
  - (3). Coordinated expenditures.
  - (4). Membership organization.
- 203. — Anonymous contributions.
- 204. Administrative agencies and proceedings.
- 205. — In general; rulemaking.
- 206. — Complaint; notice of violation.
- 207. — Advisory opinions.
- 208. — Subpoenas.
- 209. — Hearing; evidence.
- 210. — Conciliation agreement.
- 211. — Penalties and fines.
- 212. — Recoupment of matching funds.
- 213. — Disqualification of candidate.
- 214. Judicial review and enforcement.
- 215. — In general.
- 216. — Appealability; finality of decision.
- 217. — Petition for audit of accounts.
- 218. — Exhaustion of administrative remedies.
- 219. — Time for proceedings.
- 220. — Parties; standing.
- 221. — Scope of review.
- 222. — Evidence.
- 223. — Determination and disposition.
- 224. — Forfeiture of office.
- 225. — Civil liability; private right of action.
- 226. Costs and fees.
- 227. — In general.

**V. CONTRIBUTIONS AND EXPENDITURES;  
CAMPAIGN FINANCE.(Cont'd)**

- 228. — Prevailing party.
- 229. — Amount of award.

**VI. NOMINATIONS.**

- 230. In general.
- 231. Constitutional and statutory provisions.
- 232. — In general.
  - (1). In general.
  - (2). Power to regulate.
  - (3). Construction and operation.
- 233. — Ballot access.
  - (1). In general.
  - (2). Power to regulate.
  - (3). Construction and operation.
- 234. Nominations by political parties in general.
- 235. — In general.
- 236. — Authority to make.
- 237. — Multiple nominations.
- 238. — Party divisions and conflicting nominations.
- 239. Nomination by party caucus, primary meeting, or mass convention.
- 240. Nomination by primary election.
- 241. — In general.
- 242. — Declaration of candidacy; qualification as candidate.
- 243. — Necessity of primary.
- 244. — Effect of defeat in primary.
- 245. Nomination by convention or other representatives of party.
- 246. — In general.
- 247. — Authority to make.
- 248. — Calling convention or meeting.
- 249. — Election and qualification of delegates.
- 250. — Meeting and organization.
- 251. — Proceedings and nomination.
- 252. — Delegation of power to committee.
- 253. — Nomination by committee.
- 254. Certificate of nomination by party.
- 255. — In general.
- 256. — Necessity.
- 257. — Making, form, and requisites.
- 258. — Amendment and cure of defects.
- 259. — Filing.
- 260. Nomination by electors.

**142T. ELECTION LAW****VI. NOMINATIONS.(Cont'd)**

- 261. — In general.
- 262. — Authority to make; candidate qualifications.
- 263. — Number and qualifications of electors.
- 264. Petition, certificate, or nomination papers.
- 265. — In general; designating petition.
- 266. — Requisites and sufficiency.
- 267. — Qualification of circulators.
- 268. — Filing certificate or nomination papers.
- 269. — Filing fee.
- 270. Acceptance, declination, or withdrawal.
- 271. Nominations to fill vacancy among nominees.
- 272. Amendment of certificates or nomination papers.
- 273. Certification of nomination by public officers.
- 274. Publication of list of nominees.
- 275. Effect of irregularities or defects.
- 276. Votes for persons not nominated.

**VII. CONDUCT OF ELECTION.****(A) IN GENERAL.**

- 280. In general.

**(B) ORDERING OR CALLING ELECTION; NOTICE.**

- 281. In general.
- 282. Authority and exercise thereof in general.
- 283. Constitutional and statutory provisions.
- 284. — In general; power to regulate calling of election.
- 285. — Purpose and construction in general.
- 286. — Retroactive operation.
- 287. Authority to hold general or regular election.
- 288. Authority to call special election.
- 289. Petition to call special election.
- 290. Proceedings on petition.
- 291. Order or call.
- 292. — In general.
- 293. — Primary elections.
- 294. Warrant or writ.
- 295. Place for holding election.

**VII. CONDUCT OF ELECTION.(Cont'd)**

- 296. Time for holding election.
- 297. Notice or proclamation.
- 298. — In general.
- 299. — Necessity.
- 300. — Requisites and sufficiency.
- 301. — Publication and posting.
- 302. Adjournment or new election.
- 303. Review by courts of proceedings ordering or calling election.

**(C) BALLOTS.**

- 310. In general.
- 311. Constitutional and statutory provisions.
- 312. — In general; power to regulate ballots.
- 313. — Purpose and construction in general.
- 314. — Retroactive operation.
- 315. Authority and duty to prepare and furnish.
- 316. Form and contents in general.
- 317. Official ballots.
- 318. — In general; necessity.
- 319. — Order and arrangement of tickets and names.
- 320. — Party names, emblems, or devices.
  - (1). In general.
  - (2). Nomination by electors.
  - (3). Two or more tickets under same party designation.
  - (4). Same person candidate of two or more parties.
- 321. — Independent candidates.
- 322. — Blank spaces.
- 323. — Names and designations of offices.
- 324. — Names and designations of candidates.
- 325. — Grouping of offices and candidates.
- 326. — Withdrawal, disability, or death of candidate.
- 327. — Numbering.
- 328. — Indorsement.
- 329. — Objections.
- 330. — Remedies for errors and irregularities.
- 331. Indication of choice by voter.
- 332. — In general.
- 333. — Shape of mark.



**142T. ELECTION LAW****VII. CONDUCT OF ELECTION.(Cont'd)**

- 334. — Instrument or medium used.
- 335. — Position of mark.
- 336. — Punch card ballot.
- 337. — Voting for entire or part of ticket by single mark or designation.
- 338. — Errors in names of candidates.
- 339. — Defacement of names or party groups not voted for.
- 340. Insertion of names; write-in.
- 341. — In general.
- 342. — Sufficiency of designation.
- 343. Pastors.
- 344. Two or more candidates for same office.

**(D) TIME, PLACE, AND MANNER OF VOTING.**

- 360. In general.
- 361. Constitutional and statutory provisions.
- 362. — In general.
- 363. — Power to regulate conduct.
  - (1). In general.
  - (2). Place for voting.
  - (3). Time for voting.
  - (4). Mode of voting.
  - (5). Secrecy as to vote.
- 364. — Purpose and construction in general.
- 365. — Retroactive operation.
- 366. Powers and functions of election officers in general.
- 367. Application of requirements to special elections.
- 368. Polling places.
- 369. — In general.
- 370. — Establishment and alteration in general.
- 371. — Number.
- 372. — Location.
- 373. — Residence as affecting place for voting.
- 374. Time for voting.
- 375. — In general.
- 376. — Early voting in person.
- 377. — Opening polls.
- 378. — Adjournment or recess.
- 379. — Closing polls.
- 380. Presence of officers.
- 381. Presence of representatives of candidates or parties.

**VII. CONDUCT OF ELECTION.(Cont'd)**

- 382. Presence of unauthorized persons.
- 383. Registration or poll books or lists.
- 384. Mode of voting in general.
- 385. Voting by ballot.
- 386. — In general.
- 387. — Ballot boxes.
- 388. — Issue of ballots to voters.
- 389. — Preparation of ballots by voters.
- 390. — Assistance to voters.
- 391. — Deposit of ballots in boxes.
- 392. Use of voting machines.
- 393. — In general.
- 394. — Certification in general.
- 395. — Mechanical lever machines.
- 396. — Optical scanners.
- 397. — Touch screen or direct recording machines.
- 398. Absentee ballots.
- 399. — In general.
- 400. — Grounds for absence.
- 401. — Form and requisites.
- 402. — Application and delivery.
- 403. — Absentee voting from abroad.
- 404. Election conducted solely by mail.
- 405. Challenges to voters and proceedings thereon.
- 406. — In general.
- 407. — Identification of voter.
- 408. — Provisional ballot.
- 409. — Review of absentee ballots.
- 410. Rejection of vote by election officers.
- 411. Withdrawal or change of vote.
- 412. Failure of electors to vote.

**(E) DETERMINATION AND DECLARATION OF RESULT.**

- 420. In general.
- 421. Constitutional and statutory provisions.
- 422. — In general; power to regulate counting.
- 423. — Purpose and construction in general.
- 424. — Retroactive operation.
- 425. Number of votes necessary to choice.
- 426. Tie votes.
- 427. Count of votes.
- 428. — In general.
- 429. — Votes to be counted.

**142T. ELECTION LAW****VII. CONDUCT OF ELECTION.(Cont'd)**

- 430. — Presence and participation of representatives of parties or candidates.
- 431. — Adjournment.
- 432. — Recount or correction before return or canvass.
- 433. Returns.
- 434. — In general.
- 435. — Form and contents.
- 436. — Attaching ballots and documents.
- 437. — Certificates and signatures.
- 438. — Forwarding and custody.
- 439. — Compelling return.
- 440. — Correction or amendment.
- 441. Preservation or disposition of ballots.
- 442. Canvass of returns.
- 443. — In general.
- 444. — Canvassing boards or officers.
- 445. — Powers and proceedings of canvassers as to returns.
- 446. — Recount of votes.
- 447. — Compelling canvass.
- 448. — Recanvass.
- 449. Certificate of election.
- 450. — In general.
- 451. — Form, requisites, and validity.
- 452. — Compelling issue.
- 453. — Conclusiveness, operation, and effect.
- 454. — Conditional or conflicting certificates.

**(F) EFFECT OF IRREGULARITIES OR DEFECTS.**

- 460. In general.
- 461. Ordering or calling election.
- 462. Polling places.
- 463. Time for voting.
- 464. Presence of officers.
- 465. Presence of unauthorized persons.
- 466. Registration or poll books or lists.
- 467. Ballots.
- 468. — In general.
- 469. — Numbering ballots.
- 470. — Indorsement of ballots.
- 471. — Indication of choice by voter.
- 472. — Name or designation of office.
- 473. — Name or designation of candidate.
- 474. — Mutilation.
- 475. — Absentee or mail-in ballots.

**VII. CONDUCT OF ELECTION.(Cont'd)**

- 476. Mode of voting in general.
- 477. Voting by ballot.
- 478. Preparation of ballots by voters and assistance to voters.
- 479. Counting of votes.
- 480. Returns.
- 481. Canvass of returns.
- 482. Certificate of election.

**(G) EFFECT OF ILLEGAL ACTS AND PRACTICES.**

- 490. In general.
  - 491. Ballots.
  - 492. — In general.
  - 493. — Variation as to material, dimensions, color, or typography.
  - 494. — Distinguishing marks.
    - (1). In general.
    - (2). Marks resulting from acts or omissions of election officers.
    - (3). Intent.
    - (4). Shape of marks.
    - (5). Instrument or medium used in marking ballot.
    - (6). Cross-marks at improper places on ballot.
    - (7). Double or unusually heavy marks.
    - (8). Insertion of names.
    - (9). Erasure or cancellation of marks or lines.
    - (10). Blots or blurs.
    - (11). Indistinct marks.
    - (12). Similar marks on other ballots.
  - 495. — Contents.
  - 496. — Voting more than one ballot.
  - 497. Illegal votes.
  - 498. Bribery.
  - 499. Illegal expenditures and corrupt practices.
  - 500. Fraud.
  - 501. Obstruction of or interference with voters or officers.
  - 502. Intimidation and violence.
- (H) ACTIONS AND PROCEEDINGS;  
ELECTION CONTESTS.**
- 510. In general.
  - 511. Nature and form of remedy.
  - 512. Constitutional and statutory provisions.

**142T. ELECTION LAW****VII. CONDUCT OF ELECTION.(Cont'd)**

- 513. — In general; power to regulate contests.
- 514. — Purpose and construction in general.
- 515. — Retroactive operation.
- 516. Grounds.
- 517. — In general.
- 518. — Primary elections.
- 519. Objections to primary elections.
- 520. — In general.
- 521. — Who may object.
- 522. — Making, form, and requisites of objections.
- 523. — Time for objections.
- 524. — Filing and notice of objections.
- 525. — Determination by party tribunals.
- 526. — Determination by public officers.
- 527. Judicial resolution of contest in general.
- 528. Conditions precedent.
- 529. Defenses.
- 530. Persons entitled to bring contest.
- 531. Persons against whom contest may be brought.
- 532. Jurisdiction.
- 533. Review on certiorari.
- 534. Organization and sessions of courts or boards.
- 535. Venue.
- 536. Limitations and laches.
- 537. Parties.
- 538. Process or service of notice.
- 539. Appearance and representation by attorney.
- 540. Abatement on death of party.
- 541. Summary proceedings for review of primary elections.
- 542. Pleading.
- 543. — In general.
- 544. — Complaint, petition, statement, or notice.
  - (1). In general.
  - (2). Sufficiency in general.
  - (3). Eligibility of contestant and contestee.
  - (4). Errors and irregularities.
  - (5). Result of election and effect of irregularities.
  - (6). Verification.

**VII. CONDUCT OF ELECTION.(Cont'd)**

- 545. — Plea, answer, or reply.
- 546. — Amendment.
- 547. — Issues, proof, and variance.
- 548. Evidence.
- 549. — In general.
- 550. — Presumptions and burden of proof in general.
- 551. — Presumptions as to returns or certificates.
- 552. — Admissibility in general.
  - (1). In general.
  - (2). Qualifications of voters.
  - (3). Evidence as to how electors voted; privilege.
  - (4). Showing for whom votes were intended.
  - (5). Admissibility of ballots.
  - (6). Illegal acts and practices.
- 553. — Impeaching or contradicting returns or certificates.
- 554. — Weight and sufficiency.
  - (1). In general.
  - (2). Relative weight of ballots and returns or certificates.
- 555. Motions.
- 556. — In general.
- 557. — Demurrer.
- 558. — Dismissal.
- 559. Scope of inquiry and powers of court or board.
- 560. — In general.
  - (1). In general.
  - (2). Objections to certificate of nomination.
  - (3). Deduction or apportionment of illegal ballots.
  - (4). Annulment of election.
- 561. — Inspection of ballots and recount.
  - (1). In general.
  - (2). Power to recount.
  - (3). Grounds for and objections to recount.
  - (4). Proceedings to obtain recount.
  - (5). Proceedings on recount or inspection.
  - (6). Inspection of ballots by contestant.
- 562. Trial or hearing.
- 563. — In general.

**142T. ELECTION LAW****VII. CONDUCT OF ELECTION.(Cont'd)**

- 564. — Questions for jury and instructions.
- 565. New trial or rehearing.
- 566. Judgment.
- 567. — In general.
- 568. — Conclusiveness, operation, and effect.
- 569. Further appellate review.
- 570. — In general.
- 571. — Nature and form of remedy, and appellate jurisdiction.
- 572. — Right of review and decisions reviewable.
- 573. — Preservation of grounds of review.
- 574. — Proceedings for review.
- 575. — Record, bill of exceptions, or transcript.
- 576. — Hearing and scope of inquiry or review in general.
- 577. — Review of questions of fact.
- 578. — Harmless error.
- 579. — Determination.
- 580. Costs.
- 581. — In general.
- 582. — Security.

**VIII. DISCRIMINATION; VOTING RIGHTS ACT.**

- 590. In general.
- 591. Racial and language minorities in general.
- 592. Sex.
- 593. Age.
- 594. Constitutional and statutory provisions.
- 595. — In general; power to prohibit discrimination.
- 596. — Purpose and construction in general.
- 597. — Retroactive operation.
- 598. Discriminatory practices proscribed in general.
- 599. Dilution of voting power in general.
- 600. Election officials' actions.
- 601. — In general.
- 602. — Registration.
- 603. — Felon disenfranchisement.
- 604. — Voting procedures.
- 605. Voting prerequisites; tests and devices.
- 606. — In general.
- 607. — Identification of voters.
- 608. — Literacy tests.

**VIII. DISCRIMINATION; VOTING RIGHTS ACT.(Cont'd)**

- 609. — Bailout suits.
- 610. Apportionment and reapportionment.
- 611. — In general.
- 612. — Power and duty to apportion.
- 613. — Method of apportionment.
- 614. — Vote dilution.
  - (1). In general.
  - (2). Compactness and cohesiveness of minority group.
  - (3). Racially polarized or bloc voting.
  - (4). Gerrymandering of equipopulous districts.
- 615. — Equality of representation and discrimination.
  - (1). In general.
  - (2). Population as basis and deviation therefrom.
  - (3). Dispersal or concentration of minority voters.
  - (4). Majority-minority districts.
  - (5). Political subdivision boundaries.
- 616. — Effect of illegal apportionment.
- 617. At-large elections.
- 618. — In general.
- 619. — Vote dilution.
  - (1). In general.
  - (2). Compactness and cohesiveness of minority group.
  - (3). Racially polarized or bloc voting.
- 620. Federal preclearance of changes in voting procedure.
- 621. — In general; covered jurisdictions.
- 622. — Acts requiring preclearance.
- 623. — Submission of change.
- 624. — Attorney General proceedings; nonobjection to change.
- 625. — Effect of preclearance or failure to obtain preclearance.
- 626. — Bailout suits; judicial preclearance.
- 627. — Enforcement of preclearance requirement.
- 628. Judicial review or intervention.
- 629. — In general.
- 630. — Exhaustion of administrative remedies.
- 631. — Parties; standing.
- 632. — Scope of review.
- 633. — Evidence.

**142T. ELECTION LAW****VIII. DISCRIMINATION; VOTING RIGHTS ACT.(Cont'd)**

- (1). In general.
- (2). Presumptions and burden of proof.
- (3). Weight and sufficiency.
- 634. — Relief in general.
  - (1). In general.
  - (2). Appointment of observers or referees.
  - (3). Suspension of tests or devices.
  - (4). Cumulative voting.
- 635. — Costs and attorney fees.
  - (1). In general.
  - (2). Prevailing party.
  - (3). Amount of award.

**IX. BALLOT MEASURES; INITIATIVE AND REFERENDUM IN GENERAL.**

- 640. In general.
- 641. Right to initiative, referendum, and other ballot measures; constitutional limitations.
- 642. Constitutional and statutory provisions.
- 643. — In general.
- 644. — Construction and operation in general.
- 645. — Validity.
- 646. Matters subject to initiative or submission.
- 647. Construction of proposals, in general.
- 648. Notice to voters; publication.
- 649. Petitions.
- 650. — In general.
- 651. — Sufficiency.
- 652. — Distribution, solicitation, and circulation.
- 653. — Signatures and signers.
- 654. Authentication or certification; circulator's affidavits.
- 655. Identity of proponents.
- 656. Election in general.
- 657. Date of election.
- 658. Separate vote or submission requirement.
- 659. Single or multiple subjects.
- 660. Ballots in general.
- 661. Ballot title.
- 662. Captions.
- 663. Summaries, explanatory statements, and statements of purpose.

**IX. BALLOT MEASURES; INITIATIVE AND REFERENDUM IN GENERAL.(Cont'd)**

- 664. Submission clauses.
- 665. Canvassing or tabulation of votes.
- 666. Number of votes necessary.
- 667. Expenditures; fiscal matters and disclosures.
- 668. Executive proclamation of enactment.
- 669. Severability of proposals.
- 670. Judicial proceedings.
- 671. — In general.
- 672. — Pre-election challenges or review.
- 673. — Post-election challenges or review.
- 674. — Further review.
- 675. Evidence.

**X. OFFENSES AND PROSECUTIONS.****(A) IN GENERAL.**

- 680. In general.
- 681. Constitutional and statutory provisions.
- 682. — In general.
- 683. — Purpose and construction in general.
- 684. — Retroactive operation.
- 685. Fraudulent registration.
- 686. Illegal voting.
- 687. Offenses by officers.
- 688. — In general.
- 689. — Offenses by election officers.
- 690. Betting on election.
- 691. Bribery.
- 692. Corrupt practices in general.
- 693. — In general.
- 694. — Coercion of employees by employer.
- 695. Fraud.
- 696. Obstruction of or interference with voters or officers.
- 697. Intimidation and violence.
- 698. Campaign finance.
- 699. — In general.
- 700. — Conversion of funds.
- 701. Defenses.
- 702. Persons liable.

**(B) PROSECUTIONS.**

- 710. In general.
- 711. Jurisdiction and venue.
- 712. Preliminary proceedings.

145. ELECTRICITY

- 713. Arrest of voter at polls.
- 714. Indictment or information.
- 715. — In general.
- 716. — Illegal registration or voting.
- 717. — Offenses by officers.
- 718. — Bribery.
- 719. — Intimidation, violence, and interference.
- 720. — Issues, proof, and variance.
- 721. Evidence.
- 722. — In general.
- 723. — Admissibility.
- 724. — Presumptions and burden of proof.
- 725. — Weight and sufficiency.
  - (1). In general.
  - (2). Fraudulent registration.
  - (3). Illegal voting.
- 726. Trial.
- 727. — In general.
- 728. — Questions of law and fact.
- 729. — Instructions.
- 730. — Verdicts and findings.
- 731. Sentence and punishment.

143. ELECTION OF REMEDIES

SUBJECTS INCLUDED

Choice between different means of redress afforded by law for the same injury or different forms of proceeding on the same cause of action

When such election is allowed or required

Nature, requisites, operation and effect of such election

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Indictments, election between counts, see INDICTMENTS AND CHARGING INSTRUMENTS

Particular transactions, election between remedies incident to, see CARRIERS, INSURANCE, SALES and other specific topics

Pleading, election between counts, see PLEADING

Substantive inconsistent or alternative rights, claims, etc., election between, see CON-

- TRACTS, PRINCIPAL AND AGENT and other specific topics
- 1. Nature and grounds in general.
  - 2. Causes of action and remedies subject to election.
  - 3. Inconsistency of alternative remedies.
    - (1). In general.
    - (2). Action operating as affirmation of contract barring remedy on theory of nonexistence.
    - (3). Action operating as denial of contract as barring relief on contract.
    - (4). Remedies against different persons.
  - 4. Right of election.
  - 5. Necessity and time for election.
  - 6. Compelling election between remedies at law and in equity.
  - 7. Acts constituting election.
    - (1). In general.
    - (2). Notice of intention to pursue particular remedy.
    - (3). Presentation of claim in proceedings for settlement of estate of insolvent or decedent.
    - (4). Subsequent action as election against prior.
  - 8. Validity and finality of election.
  - 9. — In general.
  - 10. — Mistake or ignorance of facts.
  - 11. — Mistake as to remedy.
  - 12. — Want of jurisdiction or ineffectiveness of remedy.
  - 13. Operation and effect.
  - 14. — In general.
  - 15. — Remedies barred.
  - 16. Pleading.

145. ELECTRICITY

SUBJECTS INCLUDED

Regulation of the production and use of electricity, and of machinery, structures and apparatus employed therein, in general

**145. ELECTRICITY**

Supply of electricity as a motive power, or for illuminating, heating or other purposes

Rights, duties and liabilities incident thereto

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Eminent domain, exercise of power, see EMINENT DOMAIN

Employers' duties and liabilities for injuries to employees, see LABOR AND EMPLOYMENT, WORKERS' COMPENSATION

Environmental regulation of general applicability, see ENVIRONMENTAL LAW

Municipalities, powers of, see MUNICIPAL CORPORATIONS

Navigable waters, federal regulation of power projects, see WATER LAW

United States, rural electrification and similar projects, see UNITED STATES

Use of electricity in operation of—

Railroads, see RAILROADS, URBAN RAILROADS

Telecommunications facilities, see TELECOMMUNICATIONS

1. Regulation in general; statutes and ordinances.

1.5. Establishment or acquisition of plant by public authorities.

2. Electric companies.

2.1. — In general.

3. — Incorporation and organization.

4. — Franchises and privileges in general.  
*See also* ¶8.1, *below*.

5. — Conflicting grants of rights in streets and roads.

6. — Rights of abutting owners.

7. — Relative rights as to interfering currents of different lines.

8. — Indebtedness, liens, and mortgages.

8.1. Franchises and privileges in general.

*See also* MUNICIPAL CORPORATIONS ¶285, 680.

(1). In general; convenience and necessity in general.

(2). Service areas; competition.

(2.1). — In general.

(3). — Cooperatives and associations.

(4). Proceedings and review; injunction.

8.4. Generating facilities in general.

8.6. Environmental considerations in general.

8.7. Nuclear power.

(1). In general.

(2). Environmental and safety considerations.

*Excludes nuclear waste and effluents, see ENVIRONMENTAL LAW ¶485. Excludes environmental regulation of general applicability, see ENVIRONMENTAL LAW.*

9. Transmission facilities.

(1). In general; easements.

*See also* HIGHWAYS ¶88 and MUNICIPAL CORPORATIONS ¶679 *et seq.*

(2). Permit or consent by public authorities.

(3). Removal or change of location of poles and other apparatus.

(4). Injuries to water pipes by electrolysis.

(5). Environmental considerations.

*Environmental regulation of general applicability, see ENVIRONMENTAL LAW.*

10. Licenses and taxes.

11. Supply of electricity in general.

(1). In general.

(2). Duty to supply, conditions, and discrimination.

(3). Contracts for supply in general.

*See also* SALES.

(4). Regulation of supply and use.

(5). Supply by municipalities.

11.1. Discontinuance of supply.

(1). In general.

(2). Actions.

(3). Damages and penalties.

11.2. Rates and charges in general.

(1). In general.

(2). Contract rates.

(3). Charges of municipalities.

11.3. Regulation of charges.

(1). In general.

(2). Determination of rate base.

(3). Valuation of property and depreciation.

(4). Operating expenses.

(5). Reasonableness of charges.

(6). Proceedings before commissions.

(7). Judicial review and enforcement.

11.4. Payment and collection of charges.

11.5. Discrimination and overcharge.

(1). In general.

**146. EMBEZZLEMENT**

- (2). Actions by consumers.
- 12. Injuries incident to production or use.
  - 12.1. — In general.
- 13. — Nature and grounds of liability.
- 14. — Care required in general.
  - (1). In general.
  - (2). Dependent on location of wires.
  - (3). Customary methods and use of safest and best appliances.
- 15. — Licensees and trespassers.
  - (1). In general.
  - (2). Liability in respect to persons working about wires.
- 16. — Defects, acts, or omissions causing injury.
  - (1). In general.
  - (2). Insulation of wires.
  - (3). Injuries from broken or sagging wires.
  - (4). Prevention of contact between different wires or conductors.
  - (5). Inspection and knowledge of defects or dangers.
  - (6). Violation of ordinance.
  - (7). Proximate cause of injury.
- 17. — Companies and persons liable.
- 18. — Contributory negligence.
  - (1). In general.
  - (2). Reliance on care of owner of wire.
  - (3). Precautions against injury.
  - (4). As proximate cause of injury.
- 19. — Actions.
  - (.5). In general.
    - (1). Parties.
    - (2). Pleading.
    - (3). Presumptions and burden of proof.
    - (4). Admissibility of evidence.
    - (5). Weight and sufficiency of evidence.
    - (6). Questions for jury.
    - (6.1). — In general.
    - (7). — Insulation of wires.
    - (8). — Injuries from broken or sagging wires.
    - (9). — Prevention of contact between different wires or conductors.

- (10). — Inspection and knowledge by defendant of defects or dangers.
- (11). — Companies or persons liable for injuries.
- (12). — Contributory negligence.
- (13). Instructions and verdict and findings.
- 20. Injuries to works, conductors, or appliances.
- 21. Offenses incident to production, supply, or use.

**146. EMBEZZLEMENT****SUBJECTS INCLUDED**

Fraudulent appropriation of personal property by one in possession thereof, to whom it has been entrusted by or for the owner, as bailee, servant, agent, trustee, public officer, etc.

Nature and elements of the crimes of embezzlement, larceny by bailee, or after trust, etc., including offenses categorized as larceny by statute, if the same elements would have constituted embezzlement at common law

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Civil liability for conversion, see BAILMENT, CONVERSION AND CIVIL THEFT

Fraudulently obtaining property in possession of another, see FALSE PRETENSES, LARCENY

- 1. Nature of offense in general.
- 2. Statutory provisions.
- 3. Elements of offenses.
- 4. — In general.
- 5. — Intent.
- 6. — Nature of property.
- 7. — Value of property.



**146. EMBEZZLEMENT**

8. — Ownership of property.
9. — Possession or custody of property.
10. — Capacity or character in which property is received or held.
11. — Conversion or appropriation of property.
  - (1). In general.
  - (2). By public officers or employees.
12. Embezzlement by particular classes of persons.
  - 12.1. — In general.
13. — Servants, clerks, and employees in general.
14. — Agents.
15. — Partners.
16. — Bailees or others having possession under agreement.
17. — Attorneys.
18. — Guardians, administrators, or trustees.
19. — Assignees in insolvency or bankruptcy.
20. — Corporate officers or employees.
21. — Public officers or employees.
22. Degrees.
23. Defenses.
24. Persons liable.
25. Indictment or information.
  - 25.1. — In general.
26. — Requisites and sufficiency in general.
27. — Intent.
28. — Description of property.
29. — Value of property.
30. — Ownership of property.
31. — Possession or custody of property.
32. — Capacity or character in which property was received or held.
33. — Conversion or appropriation of property.
34. — Against public officer.
35. — Issues, proof, and variance.
36. Presumptions and burden of proof.
37. Admissibility of evidence.
  38. — In general.
  39. — Intent.
  40. — Identity and ownership of property.
  41. — Possession or custody of property and character thereof.
  42. — Incriminating circumstances.

43. — Matters of defense.
44. Weight and sufficiency of evidence.
  - (1). In general.
  - (2). Intent.
  - (3). Value of property.
  - (4). Identity and ownership of property.
  - (5). Possession or custody of property and character thereof.
  - (6). Conversion or appropriation of property.
45. Trial.
  - 45.1. — In general.
47. — Questions for jury.
48. — Instructions.
  - (1). In general.
  - (2). Intent.
  - (3). Possession or custody of property and character thereof.
  - (4). Conversion or appropriation of property.
49. — Verdict.
52. Sentence and punishment.

**148. EMINENT DOMAIN****SUBJECTS INCLUDED**

- Taking property from its owner for public use
- Nature, extent and delegation of the power in general, and constitutional and statutory provisions relating thereto
- What property is subject thereto, for what uses or purposes the power may be exercised, and necessity therefor
- Necessity and sufficiency of compensation
- Proceedings for condemnation of property and for assessment of compensation
- What constitutes compensable taking of or injury to property, and rights and remedies of the owners
- Rights acquired by exercise of power of eminent domain, and effect of abandonment of property or of public use thereof

**148. EMINENT DOMAIN****SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Condemnation or abatement of unsafe or unhealthful structures, see **HEALTH, MUNICIPAL CORPORATIONS, NUISANCE**

Damages for change of grade or construction of highway under special statutes, see **HIGHWAYS, MUNICIPAL CORPORATIONS**

Voluntary dedication of property to public use, see **DEDICATION**

War, taking or use of property for military purposes, see **WAR AND NATIONAL EMERGENCY**

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- I. NATURE, EXTENT, AND DELEGATION OF POWER,** ¶1–68.
- II. COMPENSATION,** ¶69–165.
- (A) **NECESSITY AND SUFFICIENCY IN GENERAL,** ¶69–80.
- (B) **TAKING OR INJURING PROPERTY AS GROUND FOR COMPENSATION,** ¶81–121.
- (C) **MEASURE AND AMOUNT,** ¶122–150.
- (D) **PERSONS ENTITLED AND PAYMENT,** ¶151–165.
- III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION,** ¶166–265.
- IV. REMEDIES OF OWNERS OF PROPERTY; INVERSE CONDEMNATION,** ¶266–316.
- V. TITLE OR RIGHTS ACQUIRED,** ¶317–325.

**I. NATURE, EXTENT, AND DELEGATION  
OF POWER.**

1. Nature and source of power.
2. What constitutes a taking; police and other powers distinguished.  
*See also* ¶63, 266 *et seq.*, below.
  - 2.1. — In general.
  - 2.2. — Particular acts and regulations.
  - 2.3. — Municipal corporations and local government in general; annexation of territory.
  - 2.4. — Taxes, licenses, assessments, and users' fees in general.
  - 2.5. — Contracts in general; creditors' rights.
  - 2.6. — Agriculture.
  - 2.7. — Animals.

**I. NATURE, EXTENT, AND DELEGATION  
OF POWER.(Cont'd)**

- 2.8. — Aviation; airports and overflights.
- 2.9. — Banking.
- 2.10. — Zoning, planning, or land use; building codes.
  - (1). In general.
  - (2). Redevelopment.
  - (3). Nuisance and demolition.
  - (4). Zoning and permits.
  - (5). — In general.
  - (6). — Particular cases.
  - (7). Exactions and conditions.
- 2.11. — Utilities in general.
- 2.12. — Electricity; power lines.
- 2.13. — Mining.
- 2.14. — Oil and gas.
- 2.15. — Telecommunications.
- 2.16. — Railroads.
- 2.17. — Waters and water courses; flooding.
  - (1). In general.
  - (2). Water rights.
  - (3). Water supply.
  - (4). Navigation.
  - (5). Flooding.
- 2.18. — Drains and sewers.
- 2.19. — Highways and streets.
  - (1). In general.
  - (2). Construction and maintenance.
- 2.20. — Billboards and signs.
- 2.21. — Labor and employment in general.
- 2.22. — Education.
- 2.23. — Escheat; unclaimed property.
- 2.24. — Armed services; military; national security.
- 2.25. — Fish or game.
- 2.26. — Health.
- 2.27. — Environmental protection.
  - (1). In general.
  - (2). Wetlands and coastal protection.
  - (3). Historic preservation; landmarks.
- 2.28. — Welfare and government benefits in general.
- 2.29. — Medicaid and Medicare.
- 2.30. — Child or family support; reimbursement of welfare payments.
- 2.31. — Rent control; housing.
- 2.32. — Nonresidential real estate.

**148. EMINENT DOMAIN****I. NATURE, EXTENT, AND DELEGATION  
OF POWER.(Cont'd)**

- 2.33. — Government contracts.
- 2.34. — Intellectual property; copyrights, trade secrets, patents.
- 2.35. — Criminal justice in general.
- 2.36. — Weapons.
- 2.37. — Seizure of evidence.
- 2.38. — Forfeitures.
- 2.39. — Prisons and convicts.
- 2.40. — Damages.
  - (1). In general.
  - (2). Punitive damages.
  - (3). Statutory damages caps.
- 2.41. — Appointment of counsel; legal services.
- 2.42. — Automobiles.
- 2.43. — Indians.
- 3. Constitutional and statutory provisions.
- 4. Power of state in general.
- 5. Power of United States.
- 6. Delegation of power.
  - 6.1. — In general.
- 7. — Necessity of legislative authority.
- 8. — Construction and operation of legislative acts in general.
- 9. — To municipality.
- 10. — To private corporation.
  - (1). In general.
  - (2). Telecommunications companies.
  - (3). Foreign corporations and corporations subordinate thereto.
  - (4). Lessees or successors of corporations to which power has been delegated.
- 11. — To individual.
- 12. Public use.
- 13. — In general.
- 14. — Extent of use or benefit.
- 15. — Destruction of property.
- 16. Particular uses or purposes.
- 17. — In general.
- 18. — Public buildings or grounds, or other purposes of government.
- 18.5. — Urban renewal; blight.
- 19. — Highways or other roads or ways.
- 20. — Railroads.
  - (1). In general.

**I. NATURE, EXTENT, AND DELEGATION  
OF POWER.(Cont'd)**

- (2). Depots, water stations, and side tracks.
- (3). Terminal companies.
- (4). Lines limited to passenger or to freight traffic.
- (5). Branches, spurs, and private lines.
- (6). Street railroads.
- 21. — Bridges.
- 22. — Ferries.
- 23. — Canals.
- 24. — Improvement of navigation.
- 25. — Wharves, piers, or docks.
- 26. — Chutes or booms for logging.
- 27. — Improvement of water courses, lakes, or ponds.
- 28. — Water supply in general.
- 29. — Irrigation.
- 30. — Levees or dikes.
- 31. — Drainage of lands.
- 32. — Sewers.
- 33. — Development or working of mines.
- 34. — Production and supply of oil or gas.
- 35. — Production and supply of electric power or light.
- 36. — Telegraphs or telephones.
- 37. — Mills.
- 38. — Warehouses or elevators.
- 39. — Markets.
- 40. — Schools.
- 41. — Parks and reservations.
- 42. — Cemeteries.
- 44. Property subject to appropriation.
- 45. — In general.
- 46. — Public property.
- 47. — Property previously devoted to public use.
  - (1). In general.
  - (2). Locating railroad or street railroad on land or right of way of another railroad or street railroad.
  - (3). Locating telegraph or telephone line on land or right of way of railroad.
  - (4). Locating cemetery on land of another cemetery.
  - (5). Laying out streets and sewers.

**148. EMINENT DOMAIN****I. NATURE, EXTENT, AND DELEGATION OF POWER.(Cont'd)**

- (6). Appropriating highways, streets, and parks.
- (7). Necessity of second appropriation.
- 48. — Franchises.
- 49. — Limited estates or interests.
- 50. — Easements or other rights in real property.
- 51. — Materials for construction of works.
- 52. — Exemptions.
- 53. Statutory exercise of power.
- 54. Exercise of delegated power.
- 55. — In general.
- 56. — Necessity for appropriation.
- 57. — Discretion in exercise of power.
- 58. — Extent of appropriation.
- 59. — Exhaustion or further exercise of power.
- 60. Taking for private use.
- 61. — In general.
- 62. — Consent of owner.
- 63. When taking is complete; date of taking.  
*See also* ¶2, above and ¶124, below. *Means when is appropriation complete. Excludes what constitutes exercise of power of eminent domain (see ante, 2).*
- 64. Persons entitled to question power.
- 65. Determination of questions as to validity of exercise of power.
- 65.1. — In general.
- 66. — Jurisdiction of courts in general.
- 67. — Conclusiveness and effect of legislative action.
- 68. — Conclusiveness and effect of exercise of delegated power.

**II. COMPENSATION.****(A) NECESSITY AND SUFFICIENCY IN GENERAL.**

- 69. Necessity of making compensation in general.
- 70. Constitutional provisions.
- 71. Sufficiency of statutory provisions for compensation.
- 72. Imposition of conditions.
- 73. Necessity of payment before taking.
- 74. — In general.
- 75. — Taking by United States, state, or municipality.
- 76. — Entry on making deposit or payment into court.

**II. COMPENSATION.(Cont'd)**

- 77. — Entry on giving security.
- 78. — Sufficiency of remedy by judgment and execution.
- 79. Waiver of, or estoppel to claim, compensation.

**(B) TAKING OR INJURING PROPERTY AS GROUND FOR COMPENSATION.**

- 81. Property and rights subject of compensation.
- 81.1. — In general.
- 82. — Real property in general.
- 83. — Rights in public lands.
- 84. — Water rights.
- 85. — Easements and other rights in real property.
- 86. — Franchises.
- 87. — Personal property and rights therein.
- 89. Nature of injury to property not taken.
- 90. — In general.
- 91. — General or special injuries.
- 92. — Proper or improper construction or operation of works.
- 93. — Direct or remote, contingent, or prospective consequences or losses.
- 94. Elements of compensation for injuries to property not taken.
- 95. — In general.
- 96. — Taking part of tract.
- 97. — Taking water rights.
- 98. — Alteration of flow or discharge of water.
- 99. — Prevention of access to navigable waters.
- 100. — Occupation or use of street or other highway.
  - (1). In general.
  - (2). Use by railroads.
  - (3). Use by street railroads.
  - (4). Use by elevated railroads.
  - (5). Rights of owners of land not abutting on street taken.
  - (6). Vacation.
- 101. — Alteration of grade of street or other highway.
  - (1). In general.
  - (2). By railroad or street railroad.
- 102. — Inconvenience in use of property.

**148. EMINENT DOMAIN****II. COMPENSATION.(Cont'd)**

- 103. — Necessity for fences or crossings.
- 104. — Effect of smoke, foul odors, noise, or vibration.
- 105. — Obstruction of light or air.
- 106. — Obstruction of access.
- 107. — Interference with trade or business.
- 108. — Interference with franchise.
- 109. — Danger of personal injury.
- 110. — Danger of injury to animals.
- 111. — Danger from fire.
- 112. — Injuries from construction or operation of works.
- 113. — Effect on value of property of construction or operation of works.
- 114. Temporary use.
- 114.1. — In general.
- 116. — Use during construction of works.
- 117. Appropriation to new or additional use.
- 118. — In general.
- 119. — Streets or other highways.
  - (1). In general.
  - (2). Occupation by railroads in general.
  - (3). Occupation by electric railroads.
  - (4). Occupation by elevated railroad.
  - (5). Construction of station houses and electric plants.
  - (6). Construction of additional tracks.
  - (7). Occupation by electric light or power, telegraph, or telephone poles and wires.
  - (8). Laying underground conduits, pipes, and sewers.
  - (9). Construction of trestles, viaducts, and approaches.
  - (10). Construction of tunnels and subways.
  - (11). Construction of bicycle paths.
- 120. — Railroad rights of way.
- 121. Corporations and persons liable for compensation.

**(C) MEASURE AND AMOUNT.**

- 122. Necessity of just or full compensation or indemnity.
- 123. Sufficiency of statutory provisions as to amount.

**II. COMPENSATION.(Cont'd)**

- 124. Time with reference to which compensation to be made.  
*See also* §63, above. *Excludes time from which to compute interest, see 148, post.*
- 125. Nature and extent of right taken.
- 126. — In general.
  - (1). In general.
  - (2). Waterworks or gas system.
  - (3). Water rights.
- 127. — Streets or other highways.
- 128. — Railroad rights of way.
  - (1). In general.
  - (2). Appropriations for railroad crossing.
  - (3). Appropriation for street crossing.
- 129. Taking entire tract or piece of property.
- 130. — In general.
- 131. — Value of land.
- 132. — Growing trees and crops.
- 133. — Improvements and fixtures.
- 134. — Value for special use.
- 135. Taking part of tract or property.
- 136. — In general.
- 137. — Land constituting single tract.
- 138. — Injuries to part not taken.
- 139. Injuries to property not taken.
- 140. — In general.
- 141. — Depreciation of value.
  - (1). In general.
  - (2). Occupation of street by railroad.
  - (3). Alteration of grade of street.
- 142. — Inconvenience in use.
- 143. Temporary use of property.
- 144. Deduction or set-off of benefits.
- 145. — In general.
  - (1). In general.
  - (2). Occupation of street by railroad.
  - (3). Alteration of grade of street.
  - (4). Opening or altering street or highway.
  - (5). Railroad right of way.
- 146. — General or special benefits.
- 147. Limited estates or interests in property.
- 148. Interest as element, and damages for delay in payment, of compensation.
- 149. Amount awarded in general.
  - (1). In general.
  - (2). Nature and use of property.
  - (2.1). — In general.

**148. EMINENT DOMAIN****II. COMPENSATION.(Cont'd)**

- (3). — Commercial or industrial property.
- (4). — Farm, rural, or timber land.
- (5). Limited estates or interests.
- (6). Nature and extent of taking or damage.
- (7). Consequential or severance damages; expenses.
- 149.5. Nominal or substantial damages.
- 150. Inadequate or excessive compensation.

**(D) PERSONS ENTITLED AND PAYMENT.**

- 151. Persons entitled.
- 152. — In general.
  - (1). In general.
  - (2). Life tenant or remainderman.
- 153. — Vendor or purchaser.
- 154. — Mortgagor or mortgagee.
- 155. — Landlord or tenant.
- 156. — Executors, administrators, devisees, or heirs.
- 157. Apportionment.
- 158. Determination of conflicting claims.
- 159. Duties as to payment.
- 160. — In general.
- 161. — Conflicting claims.
- 162. — Unknown owners.
- 163. Requisites and sufficiency of payment.
- 164. Operation and effect of payment.
- 165. Recovery of payments.

**III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION.**

- 166. Nature and form of proceeding.
- 167. Statutory provisions and remedies.
  - (1). In general.
  - (2). Validity.
  - (3). Exclusiveness of statutory remedy.
  - (4). Strict compliance with statutory requirements.
  - (5). Revision and repeal of statutes.
- 168. Right to institute proceedings.
  - (1). In general.
  - (2). Public officer or corporation.
  - (3). Owner of land.
- 169. Conditions precedent in general.
- 170. Negotiations, offer to purchase, and inability to agree with owner.

**III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION.(Cont'd)**

- 171. Defenses and objections.
- 172. Jurisdiction.
- 173. Venue.
- 174. Time for application.
- 175. Parties.
  - 175.1. — In general.
- 176. — Petitioner or complainant.
- 177. — Defendants.
- 178. — Intervention or substitution.
- 178.5. Abatement and revival of proceedings.
- 179. Process or notice.
  - 179.1. — In general.
- 180. — Necessity.
- 181. — Form, requisites, and sufficiency.
- 182. — Service.
- 183. — Return and proof of service.
- 184. — Defects, objections, and amendment.
- 185. Appearance and representation by attorney.
- 186. Maps, plans, or surveys.
- 187. Possession and use pending proceedings; injunction.
- 188. Bond or deposit as security.
- 189. Pleading.
  - 189.1. — In general.
- 190. — Mode and form in general.
- 191. — Petition or complaint.
  - (1). In general.
  - (2). Showing right and capacity to institute proceedings.
  - (3). Showing public purpose and necessity.
  - (4). Showing intention to complete work.
  - (5). Showing inability to agree with owner.
  - (6). Description of property and interests affected.
  - (7). Showing location, route, and termini.
  - (8). Designating owners of property.
- 192. — Answer and cross-petition.
- 193. — Demurrer.
- 194. — Amendments.
- 195. — Issues, proof, and variance.
- 196. Evidence as to right to take.
- 197. Dismissal before hearing.

**148. EMINENT DOMAIN****III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION.(Cont'd)**

- 198. Hearing and determination as to right to take.
  - (1). In general.
  - (2). Questions for jury.
- 199. Evidence as to compensation.
 

*Excludes: evidence of value of, or price paid for, other property (see EVIDENCE ¶142); market value as shown by hearsay evidence of sales, offers to sell, or market quotations (see EVIDENCE ¶323); price previously paid or offered (see EVIDENCE ¶113(8, 16)); expert testimony (see EVIDENCE ¶524, 543(3), 571(7)).*

  - 199.1. — In general.
- 200. — Presumptions and burden of proof.
- 201. — Admissibility in general.
- 202. — Value of property.
  - (1). In general.
  - (2). Comparison with other property.
  - (4). Value for special purposes.
  - (6). Assessed valuation.
  - (7). Rental value.
  - (8). Turnpike.
  - (9). Water plant.
- 203. — Damages.
  - (1). In general.
  - (2). Depreciation of value.
  - (3). Depreciation of mortgage value.
  - (4). Depreciation of rental value.
  - (5). Comparison with other property.
  - (6). Offers to buy or sell.
  - (7). Interference with trade or business.
- 204. — Benefits.
- 205. — Weight and sufficiency.
- 206. Mode of assessment of compensation.
- 207. — In general.
- 208. — Arbitration.
- 209. — Trial by jury.
- 210. — Assessment by commissioners, appraisers, or viewers.
- 211. — Trial by court or referee.
- 212. Arbitration and award.
- 213. Assessment by jury.
  - 213.1. — In general.
- 214. — Application and proceedings thereon.
- 215. — Qualifications of jurors.
- 216. — Summoning and impaneling jurors.
- 217. — Oath of jurors.

**III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION.(Cont'd)**

- 218. — Compensation of jurors.
- 219. — Conduct of proceedings in general.
- 220. — View.
- 221. — Questions for jury.
- 222. — Instructions.
  - (1). In general.
  - (2). Necessity and authority to instruct jury.
  - (3). Effect of view as evidence.
  - (4). Value of property.
  - (5). Damages.
  - (6). Benefits.
- 223. — Verdict and findings.
- 224. Setting aside verdict and new trial.
- 225. Assessment by commissioners, appraisers, or viewers.
  - 225.1. — In general.
- 226. — Application and proceedings thereon.
- 227. — Qualifications.
- 228. — Appointment and removal.
- 229. — Oath.
- 230. — Compensation.
- 231. — Conduct of proceedings in general.
- 232. — View.
- 233. — Scope of inquiry and questions to be determined.
- 234. — Report and findings or award.
  - (1). In general.
  - (2). Description of property affected.
  - (3). Severance as to parcels, parties, and elements of damage.
  - (4). Designation of owners or persons entitled to compensation.
  - (5). Filing report and notice.
  - (6). Correction and amendment.
- 235. — Objections and exceptions.
- 236. — Recommittal.
- 237. — Confirmation or setting aside of report or award.
  - (1). In general.
  - (2). Authority to confirm or set aside.
  - (3). Error in reception of evidence.
  - (4). Disqualification or misconduct of or affecting commissioners, appraisers, or viewers.
  - (5). Error in assessing damages.
  - (6). Modification.

**148. EMINENT DOMAIN****III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION.(Cont'd)**

- (7). Proceedings to confirm or set aside.
- 238. — Review by court.
  - (.5). In general.
  - (1). Nature and form of remedy and jurisdiction.
  - (2). Decisions reviewable.
  - (3). Right of review and parties.
  - (4). Proceedings for transfer of cause and effect of appeal.
  - (5). Record.
  - (6). Trial or review.
  - (7). Determination and disposition of cause.
- 239. — Trial by jury on appeal.
- 240. Assessment by court or referee.
- 241. Requisites and entry of judgment.
- 242. Collateral attack.
- 243. Conclusiveness and effect of award or judgment in general.
  - (1). In general.
  - (2). Matters concluded.
  - (3). Persons concluded.
- 244. Effect of award or judgment as to right to possession of property.
- 245. Right to compensation awarded.
- 246. Effect of abandonment or dismissal of proceedings.
  - (1). In general.
  - (2). Right to discontinue or abandon proceedings.
  - (3). Acts constituting abandonment.
  - (4). Liability for damages on discontinuing or abandoning proceedings.
  - (5). Liability for compensation awarded.
- 247. Interest on award or judgment.
  - (1). In general.
  - (2). Time during which interest runs.
  - (3). Necessity and sufficiency of demand.
  - (4). Effect of deposit of amount of award.
- 248. Lien of award or judgment.
- 249. Enforcement of award or judgment; injunction.
- 250. Appeal.

**III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION.(Cont'd)**

- 250.1. — In general.
- 251. — Nature and form of remedy.
- 252. — Appellate jurisdiction.
- 253. — Decisions reviewable.
  - (1). In general.
  - (2). Decisions determining right to take or appointing commissioners.
  - (3). Decisions confirming report or award.
  - (4). Decisions on motion to set aside award or for new trial.
- 254. — Right of review.
- 255. — Presentation and reservation in lower court of grounds of review.
- 256. — Parties.
- 257. — Taking and perfecting appeal.
- 258. — Effect of appeal and supersedeas.
- 259. — Record.
- 261. — Trial de novo.
- 262. — Review.
  - (1). In general.
  - (2). Parties entitled to allege error.
  - (3). Presumptions.
  - (4). Questions of fact, verdicts, and findings.
  - (5). Harmless error.
- 263. — Determination and disposition of cause.
- 264. Review on certiorari.
- 265. Costs, fees, and expenses.
  - (1). In general.
  - (2). Persons liable.
  - (3). Amount, rate, and items.
  - (4). On appeal or error or on new trial.
  - (5). Liability for costs and expenses on abandoning proceedings.

**IV. REMEDIES OF OWNERS OF PROPERTY; INVERSE CONDEMNATION.**

- 266. Nature and grounds in general.  
*See also* ¶2, above.
- 267. Statutory provisions and remedies.
- 268. Recovery of possession of property.
- 269. Compelling proceedings to assess compensation.
- 270. Recovery of compensation.



**148. EMINENT DOMAIN****IV. REMEDIES OF OWNERS OF PROPERTY;  
INVERSE CONDEMNATION.(Cont'd)**

- 271. Recovery of damages.
- 272. Injunction.
- 272.1. — In general.
- 273. — Grounds of relief in general.
- 274. — Restraining taking of or injury to property.
  - (1). In general.
  - (2). Invalidity of ordinance.
  - (3). Taking property not covered by condemnation proceedings.
  - (4). Failure to compensate owner.
  - (5). Failure to institute proceedings.
- 275. — Restraining construction of works.
  - (1). In general.
  - (2). Damage to property.
  - (3). Taking property not covered by condemnation proceedings.
  - (4). Failure to compensate owner.
  - (5). Failure to institute proceedings.
  - (6). Invalidity of statute.
  - (7). Defective proceedings.
- 276. — Restraining operation of works.
- 277. Conditions precedent to action; ripeness.
- 278. Defenses.
- 279. — In general.
  - (1). In general.
  - (2). Grounds for refusing injunction.
- 280. — Consent or acquiescence of owner.
- 281. — Payment of compensation or other satisfaction.
- 282. — Release or discharge.
- 283. — Former adjudication.
- 284. Persons entitled to sue.
- 285. Corporations or persons liable.
- 286. Jurisdiction.
- 287. Venue.
- 288. Limitations and laches.
  - (1). In general.  
*See also LIMITATION OF ACTIONS.*
  - (2). Prescription.
- 289. Parties, process, and appearance.
- 290. Pendency of other action.
- 291. Proceedings to assess compensation pending action.
- 292. Preliminary or interlocutory injunction.
- 293. Pleading.
  - (.5). In general.

**IV. REMEDIES OF OWNERS OF PROPERTY;  
INVERSE CONDEMNATION.(Cont'd)**

- (1). Petition or complaint.
- (2). Plea, answer and subsequent pleading.
- (3). Amendment.
- (4). Issues, proof, and variance.
- 294. Evidence.
- 294.1. — In general.
- 295. — Presumptions and burden of proof.
- 296. — Admissibility in general.
- 297. — Value of property.
- 298. — Damages.
- 299. — Benefits.
- 300. — Weight and sufficiency.
- 301. Damages and amount of recovery.  
*See also ¶81-121, above.*
- 302. — In general.
- 303. — Compensation for property taken or for injury.
- 304. — Exemplary damages.
- 305. — Inadequate or excessive damages.
- 306. Permanent injunction or alternative relief.
- 307. Trial.
  - (1). In general.
  - (2). Questions for jury.
  - (3). Instructions.
  - (4). Verdict and findings.
- 308. Judgment or decree.
- 309. Effect of judgment for damages as to title to property.
- 310. Lien of judgment.
- 311. Execution and enforcement of judgment.
- 312. — In general.
- 314. — Stay pending proceedings to assess compensation.
- 315. Appeal and error.
- 316. Costs.
- V. TITLE OR RIGHTS ACQUIRED.**
- 317. Nature of estate or interest acquired.
  - (1). In general.
  - (2). Title in fee or easement.
  - (3). Rights in adjacent street.
- 318. Extent of right to use of property.
- 319. Estate and rights remaining in owner.
- 320. Time of passing of title or right.
- 321. Duration of rights.

**149E. ENVIRONMENTAL LAW**

**V. TITLE OR RIGHTS ACQUIRED.**(Cont'd)

- 322. Transfer of rights.
- 323. Abandonment or nonuser.
- 324. Misuser or diversion.
- 325. Reversion.

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**149. ENTRY, WRIT OF**

**SUBJECTS INCLUDED**

Actions for recovery of specific real property, founded on mere right of possession thereof, with or without incidental recovery of damages for detention or profits, etc. thereof, more particularly writs of entry and statutory possessory actions of similar character

Nature and scope of the remedy in general; grounds of such actions and defenses there-to

By and against whom and as to what property they may be maintained

Procedure therein, and incidental recovery for use and occupation, profits, damages, improvements, etc.

Verdict and judgment and enforcement thereof

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Damages for wrongful entry upon or injury to real property, recovery of, see TRESPASS

Forcible entry and detainer, actions for, see FORCIBLE ENTRY AND DETAINER, LANDLORD AND TENANT

Mortgages, writs of entry to foreclose, see MORTGAGES AND DEEDS OF TRUST

Possession merely, actions for recovery of, including possessory actions at civil law, see EJECTMENT, TRESPASS TO TRY TITLE

Real actions founded on right of property, including petitory actions under civil law, see REAL ACTIONS

- 1. Nature and scope of remedy.
- 2. Statutory provisions.
- 3. Grounds.

- 4. — In general.
- 5. — Title and right to possession of demandant.
- 6. — Ouster or disseisin and possession of tenant.
- 7. Defenses.
- 8. Persons entitled to sue.
- 9. Persons against whom action may be brought.
- 10. Jurisdiction and venue.
- 11. Time to sue.  
*See also LIMITATION OF ACTIONS.*
- 12. Parties.
- 13. Process and appearance.
- 14. Pleading.
- 14.1. — In general.
- 15. — Declaration.
- 16. — Plea.
- 17. — Disclaimer.
- 18. — Replication.
- 19. — Amendments.
- 20. — Issues, proof, and variance.
- 21. Evidence.
- 22. Trial.
- 23. Judgment.
- 24. Damages and mesne profits.
- 25. Improvements.
- 26. Review.
- 27. Restitution.

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**149E. ENVIRONMENTAL LAW**

**SUBJECTS INCLUDED**

Regulation and protection of the environment under enacted laws of general application; more specifically, laws—

Concerning water, air, and noise pollution

Protecting land and water resources, particularly wilderness areas, wetlands, and coasts and shorelines

Protecting plants and wildlife, particularly endangered or threatened species

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Protecting historically significant property, landmarks, archeological sites, antiquities, and the like

Regulating waste disposal and management, including salvage and recycling

Regulating the generation, handling, treatment, storage, disposal, and clean up of hazardous or toxic wastes

Regulating hazardous or toxic materials, including chemicals, petroleum products, poisons, and pesticides

Regulating radioactive or nuclear waste and materials, and the sources thereof

Requiring government actors to prepare environmental assessments or impact statements or otherwise to consider environmental factors

Agencies for the administration of such laws, their powers and proceedings, and judicial review of their decisions or actions

Citizen suits to enforce such laws

Criminal offenses, prosecutions, and penalties under such laws

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Agricultural use of pesticides and herbicides, see AGRICULTURE

Airport location, construction, and operation, see AVIATION

Common law liability for harm to the environment, see CONTRIBUTION, DAMAGES, INDEMNITY, NEGLIGENCE, NUISANCE, PRODUCTS LIABILITY, TORTS, WATER LAW, and other specific topics

Drainage of swamps and lowlands, see WATER LAW

Electricity, generation and transmission, see ELECTRICITY

Fish and wildlife considered as game animals or as objects of ownership, see ANIMALS, FISH, GAME

Flood control, see WATER LAW

Forest management in general, see WOODS AND FORESTS

Highway and bridge location and construction, see BRIDGES, HIGHWAYS

Indians rights and application of federal laws protecting particular animals, see INDIANS ¶351

Local regulation of garbage collection, noises, odors, and the like, see COUNTIES, TOWNS, MUNICIPAL CORPORATIONS

Local zoning and planning regulations, see ZONING AND PLANNING

Mining and mineral exploration, see MINES AND MINERALS

Public health, see HEALTH

Tobacco sales and advertising, regulation of, see ANTITRUST AND TRADE REGULATION

Water supply, protection of, see WATER LAW

I. IN GENERAL, ¶1–30.

II. LAND USE AND CONSERVATION, ¶31–60.

III. HISTORICAL PRESERVATION, ¶61–110.

IV. WATER, WETLANDS, AND WATERFRONT CONSERVATION, ¶111–160.

V. WATER POLLUTION, ¶161–240.

VI. AIR POLLUTION, ¶241–310.

VII. NOISE POLLUTION, ¶311–340.

VIII. WASTE DISPOSAL AND MANAGEMENT, ¶341–400.

IX. HAZARDOUS WASTE OR MATERIALS, ¶401–470.

X. RADIATION AND NUCLEAR MATERIALS, ¶471–510.

XI. PLANTS AND WILDLIFE, ¶511–570.

XII. ASSESSMENTS AND IMPACT STATEMENTS, ¶571–620.

XIII. JUDICIAL REVIEW OR INTERVENTION, ¶621–730.

XIV. CRIMINAL RESPONSIBILITY, ¶731–762.

**I. IN GENERAL.**

1. In general.
2. Power to regulate in general.
3. Constitutional provisions, statutes, and ordinances in general.
4. — In general.
5. — Purpose.
6. — Validity.
7. — Construction.
8. — Retrospective application.
9. Concurrent and conflicting statutes or regulations in general.
10. — In general.

**149E. ENVIRONMENTAL LAW****I. IN GENERAL.**(Cont'd)

11. — Federal preemption.
12. — State preemption of local laws and actions.
13. Regulation and protection in general.
14. Administrative agencies and proceedings in general.
15. — In general.
16. — Regulations and rulemaking in general.
17. — Hearing, evidence, determination, and relief.
18. — Administrative review of administrative decisions.
19. Enforcement in general; penalties and fines.
20. Private right of action and citizen suits, in general.

**II. LAND USE AND CONSERVATION.**

31. In general.
32. Power to regulate.
33. Constitutional provisions, statutes, and ordinances.
34. — In general.
35. — Purpose.
36. — Validity.
37. — Construction.
38. — Retrospective application.
39. Concurrent and conflicting statutes or regulations.
40. — In general.
41. — Federal preemption.
42. — State preemption of local laws and actions.
43. Regulation in general.
44. Forest and wilderness management.  
*Excludes forest management more generally, see WOODS AND FORESTS ¶8.*
45. Administrative agencies and proceedings.
46. Enforcement in general; penalties and fines.
47. Private right of action; citizen suits.
48. Evidence.
49. — In general.
50. — Presumptions, inferences, and burden of proof.
51. — Weight and sufficiency.

**III. HISTORICAL PRESERVATION.**

61. In general.
62. Power to regulate.
63. Constitutional provisions, statutes, and ordinances.
64. — In general.
65. — Purpose.
66. — Validity.
67. — Construction.
68. — Retrospective application.
69. Concurrent and conflicting statutes or regulations.
70. — In general.
71. — Federal preemption.
72. — State preemption of local laws and actions.
73. Regulation and protection in general.
74. — In general.
75. — Federal regulation.
76. — State and local regulation.
77. Property protected; designation and listing.
78. — In general.
79. — Exemptions.
80. — Removal of protection; delisting.
81. Activities affecting protected property; projects and undertakings regulated.
82. — In general.
83. — Review and consultation requirements; permits and approvals.
84. — Construction, demolition, alteration, or repair.
85. — Surface transportation; highways, roads, and bridges.
86. — Waters and water courses; dams and flood control.
87. — Military projects.
88. — Urban renewal and development; housing projects.
89. — Other particular activities.
90. Archaeological sites and resources; antiquities and artifacts.
91. Administrative agencies and proceedings.
92. — In general.
93. — Regulations and rulemaking in general.
94. — Notice and comment.
95. — Hearing and determination.
96. — Administrative review of administrative decisions.

**149E. ENVIRONMENTAL LAW****III. HISTORICAL PRESERVATION.(Cont'd)**

- 97. Enforcement in general.
- 98. Penalties and fines.
- 99. Private right of action; citizen suits.
- 100. Evidence.
- 101. — In general.
- 102. — Presumptions, inferences, and burden of proof.
- 103. — Weight and sufficiency.

**IV. WATER, WETLANDS, AND WATERFRONT CONSERVATION.**

- 111. In general.
- 112. Power to regulate.
- 113. Constitutional provisions, statutes, and ordinances.
- 114. — In general.
- 115. — Purpose.
- 116. — Validity.
- 117. — Construction.
- 118. — Retrospective application.
- 119. Concurrent and conflicting statutes or regulations.
- 120. — In general.
- 121. — Federal preemption.
- 122. — State preemption of local laws and actions.
- 123. Regulation in general.
- 124. Oceans.
- 125. Coastal areas, bays, and shorelines.
- 126. Rivers, streams, and waterways.
- 127. Lakes and ponds.
- 128. Wetlands.
- 129. Permissible uses and activities; permits and licenses; management.
- 130. — In general.
- 131. — Oceans.
- 132. — Coastal areas, bays, and shorelines.
- 133. — Rivers, streams, and waterways.
- 134. — Lakes and ponds.
- 135. — Wetlands.
- 136. — Discharge or deposit of dredged or fill material.
- 137. — Exceptions, exemptions, and variances.
- 138. Administrative agencies and proceedings.
- 139. — In general.
- 140. — Regulations and rulemaking in general.

**IV. WATER, WETLANDS, AND WATERFRONT CONSERVATION.(Cont'd)**

- 141. — Notice and comment.
- 142. — Hearing and determination.
- 143. — Administrative review of administrative decisions.
- 144. Enforcement in general.
- 145. Penalties and fines.
- 146. Private right of action; citizen suits.
- 147. Evidence.
- 148. — In general.
- 149. — Presumptions, inferences, and burden of proof.
- 150. — Weight and sufficiency.

**V. WATER POLLUTION.**

- 161. In general.
- 162. Power to regulate.
- 163. Constitutional provisions, statutes, and ordinances.
- 164. — In general.
- 165. — Purpose.
- 166. — Validity.
- 167. — Construction.
- 168. — Retrospective application.
- 169. Concurrent and conflicting statutes or regulations.
- 170. — In general.
- 171. — Federal preemption.
- 172. — State preemption of local laws and actions.
- 173. Waters protected.
- 174. Substances, sources, and activities regulated.
- 175. — In general.
- 176. — Sewage and sewers.
- 177. — Petroleum.
- 178. — Mines and mining.
- 179. Public facilities and projects.
- 180. Grants and financing.
- 181. Pretreatment programs; removal credit.
- 182. Effluent limitations and guidelines.
- 183. — In general.
- 184. — Technology-based limits.
- 185. — Secondary treatment.
- 186. — Particular limitations and guidelines.
- 187. Water quality standards or plans.
- 188. — In general.

**149E. ENVIRONMENTAL LAW****V. WATER POLLUTION.(Cont'd)**

- 189. — Classification of waters; designated uses.
- 190. — Particular water quality standards and criteria.
- 191. — Antidegradation policies and rules.
- 192. — Daily maximum load and limited segments.
- 193. — Interstate pollution.
- 194. Permits and certifications.
- 195. — In general.
- 196. — Discharge of pollutants.
- 197. — Conditions and limitations.
- 198. — Modification or amendment.
- 199. — Revocation.
- 200. Extensions, exceptions, and variances for particular parties.
- 201. — In general.
- 202. — Fundamentally different factors.
- 203. — Cost; hardship; feasibility.
- 204. Compliance and enforcement.
- 205. — In general.
- 206. — Violations and liability in general.
- 207. — Reporting, notice, and monitoring requirements.
- 208. — Defenses.
- 209. — Remedies in general.
- 210. — Abatement.
- 211. — Cease and desist orders.
- 212. — Removal of pollutants.
- 213. Public reimbursement.
- 214. Civil liability; cleanup costs.
- 215. Administrative agencies and proceedings.
- 216. — In general.
- 217. — Regulations and rulemaking in general.
- 218. — Notice and comment.
- 219. — Proceedings in general; hearing and determination.
- 220. — Permit and certification proceedings.
- 221. — Compliance and enforcement proceedings.
- 222. — Administrative review of administrative decisions.
- 223. Penalties and fines.
- 224. Forfeitures.
- 225. Liens.

**V. WATER POLLUTION.(Cont'd)**

- 226. Private right of action; citizen suits.
- 227. Evidence.
- 228. — In general.
- 229. — Presumptions, inferences, and burden of proof.
- 230. — Weight and sufficiency.

**VI. AIR POLLUTION.**

- 241. In general.
- 242. Power to regulate.
- 243. Constitutional provisions, statutes, and ordinances.
- 244. — In general.
- 245. — Purpose.
- 246. — Validity.
- 247. — Construction.
- 248. — Retrospective application.
- 249. Concurrent and conflicting statutes or regulations.
- 250. — In general.
- 251. — Federal preemption.
- 252. — State preemption of local laws and actions.
- 253. Federal regulation.
- 254. — In general.
- 255. — National Ambient Air Quality Standards.
- 256. State and local regulation in general.
- 257. Implementation of federal standards.
- 258. — In general.
- 259. — Inventory, emission limits, and modelling.
- 260. — Monitoring.
- 261. — Contents of implementation plans.
- 262. — Cost and feasibility.
- 263. — Non-attainment areas.
- 264. — Prevention of significant deterioration.
- 265. Permits, licenses, and approvals in general.
- 266. Particular sources of pollution.
- 267. — In general.
- 268. — Stationary sources in general.
- 269. — Power-generating facilities; utilities.
- 270. — Manufacturing facilities; factories and plants.

**149E. ENVIRONMENTAL LAW****VI. AIR POLLUTION.(Cont'd)**

- 271. — Mines and quarries; refineries and smelters.
- 272. — Waste disposal facilities; incineration.
- 273. — Mobile sources; motor vehicles.
- 274. — Exemptions, extensions, exceptions, and variances.
- 275. Particular pollutants.
- 276. — In general.
- 277. — Particulate matter.
- 278. — Fugitive emissions.
- 279. — Acid rain in general.
- 280. — Sulfur and sulfur dioxide.
- 281. — Nitrogen oxides.
- 282. — Volatile organic compounds.
- 283. — Lead.
- 284. — Asbestos.
- 285. Indoor air; tobacco.  
*Excludes regulation of tobacco sales and advertising, see ANTITRUST AND TRADE REGULATION.*
- 286. Odor.
- 287. Ozone.
- 288. International issues.
- 289. Administrative agencies and proceedings.
- 290. — In general.
- 291. — Regulations and rulemaking in general.
- 292. — Notice and comment.
- 293. — Hearing and determination; statement of reasons.
- 294. — Administrative review of administrative decisions.
- 295. Enforcement in general.
- 296. Penalties and fines.
- 297. Private right of action; citizen suits.
- 298. Evidence.
- 299. — In general.
- 300. — Presumptions, inferences, and burden of proof.
- 301. — Weight and sufficiency.

**VII. NOISE POLLUTION.**

- 311. In general.
- 312. Power to regulate.
- 313. Constitutional provisions, statutes, and ordinances.
- 314. — In general.
- 315. — Purpose.

**VII. NOISE POLLUTION.(Cont'd)**

- 316. — Validity.
- 317. — Construction.
- 318. — Retrospective application.
- 319. Concurrent and conflicting statutes or regulations.
- 320. — In general.
- 321. — Federal preemption.
- 322. — State preemption of local laws and actions.
- 323. Regulation in general.
- 324. Highways, roads, and vehicles.
- 325. Aviation and airports.  
*See also AVIATION.*
- 326. Railways.
- 327. Other particular subjects and regulations.
- 328. Administrative agencies and proceedings.
- 329. Enforcement in general; penalties and fines.
- 330. Private right of action; citizen suits.
- 331. Evidence.

**VIII. WASTE DISPOSAL AND MANAGEMENT.**

- 341. In general.
- 342. Power to regulate.
- 343. Constitutional provisions, statutes, and ordinances.
- 344. — In general.
- 345. — Purpose.
- 346. — Validity.
  - (1). In general.
  - (2). Flow control measures.
- 347. — Construction.
- 348. — Retrospective application.
- 349. Concurrent and conflicting statutes or regulations.
- 350. — In general.
- 351. — Federal preemption.
- 352. — State preemption of local laws and actions.
- 353. Regulation in general.
- 354. Waste subject to regulation.
- 355. Waste management plans, policies, and programs in general.
- 356. Landfills and disposal sites.
- 357. — In general.
- 358. — Permits, licenses, and approvals in general.

**149E. ENVIRONMENTAL LAW****VIII. WASTE DISPOSAL AND  
MANAGEMENT.(Cont'd)**

- 359. — Site selection and location.
- 360. — Design and construction.
- 361. — Operation and management.
- 362. — Modification and expansion.
- 363. — Closure; inactive sites.
- 364. — Fees and taxes.
- 365. — Financial responsibility; bonds and insurance.
- 366. — Cleanup and remediation; liability.
- 367. Collection and transportation of waste.
- 368. — In general.
- 369. — Temporary disposal sites; transfer facilities.
- 370. Incineration.
- 371. Sewage and septic systems.
- 372. Salvage and recycling.
- 373. Interjurisdictional issues.
- 374. — In general.
- 375. — Flow control.
- 376. — Interstate flows, effects, and burdens.
- 377. Administrative and local agencies and proceedings.
- 378. — In general.
- 379. — Regulations and rulemaking in general.
- 380. — Notice and comment.
- 381. — Hearing and determination.
- 382. — Administrative review of administrative decisions.
- 383. Enforcement in general.
- 384. Penalties and fines.
- 385. Private right of action; citizen suits.
- 386. Evidence.
- 387. — In general.
- 388. — Presumptions, inferences, and burden of proof.
- 389. — Weight and sufficiency.

**IX. HAZARDOUS WASTE OR MATERIALS.**

- 401. In general.
- 402. Power to regulate.
- 403. Constitutional provisions, statutes, and ordinances.
- 404. — In general.
- 405. — Purpose.
- 406. — Validity.

**IX. HAZARDOUS WASTE OR  
MATERIALS.(Cont'd)**

- (1). In general.
- (2). Flow control measures.
- 407. — Construction.
- 408. — Retrospective application.
- 409. Concurrent and conflicting statutes or regulations.
- 410. — In general.
- 411. — Federal preemption.
- 412. — State preemption of local laws and actions.
- 413. Hazardous and toxic substances generally.
- 414. — In general.
- 415. — Notice and reporting requirements; listing.
- 416. — Storage in general.
- 417. — Underground tanks.
- 418. — Transportation in general.
- 419. — Pipelines.
- 420. — Other particular subjects and regulations.
- 421. Pesticides, herbicides, insecticides, fungicides, rodenticides.  
*Excludes agricultural use of such substances, see AGRICULTURE §9.2.*
- 422. — In general.
- 423. — Registration and labelling.
- 424. — Other particular subjects and regulations.
- 425. Hazardous, dangerous, or toxic waste.
- 426. — In general.
- 427. — Substances regulated.
- 428. — Persons and activities regulated in general.
- 429. — Generation and handling.
- 430. — Treatment, storage, and disposal; facilities and sites.
- 431. — Transportation.
- 432. — Permits, licenses, and approvals.
- 433. — Incineration.
- (1). In general.
- (2). Permits, licenses, and approvals.
- 434. — Fees and taxes.
- 435. — Financial responsibility; bonds and insurance.
- 436. Response and cleanup; liability.
- 437. — In general.
- 438. — Elements in general.



**149E. ENVIRONMENTAL LAW****IX. HAZARDOUS WASTE OR MATERIALS.(Cont'd)**

- 439. — Remedial and removal actions in general; cleanup plans.
- 440. — Substances covered.
- 441. — Release and disposal in general.
- 442. — Threatened release.
- 443. — Facilities and properties covered.
- 444. — Persons protected or authorized to undertake removal actions.
- 445. — Persons responsible.
  - (1). In general.
  - (2). Lenders and secured creditors.
  - (3). Joint and several liability; divisibility.
- 446. — Covered costs; damages.
- 447. — Contribution and indemnity; allocation of liability.
- 448. — Liens.
- 449. Interjurisdictional issues; flow control.
- 450. Administrative agencies and proceedings.
- 451. — In general.
- 452. — Regulations and rulemaking in general.
- 453. — Notice and comment.
- 454. — Hearing and determination.
- 455. — Administrative review of administrative decisions.
- 456. Enforcement in general.
- 457. Penalties and fines.
- 458. Private right of action; citizen suits.
- 459. — In general.
- 460. — Hazardous, dangerous, or toxic waste.
- 461. — Response and cleanup; monetary relief.
- 462. Evidence.
- 463. — In general.
- 464. — Presumptions, inferences, and burden of proof.
- 465. — Weight and sufficiency.

**X. RADIATION AND NUCLEAR MATERIALS.**

*Nuclear power plants, see also ELECTRICITY* ¶8.7.

- 471. In general.
- 472. Power to regulate.
- 473. Constitutional provisions, statutes, and ordinances.
- 474. — In general.

**X. RADIATION AND NUCLEAR MATERIALS.(Cont'd)**

- 475. — Purpose.
- 476. — Validity.
- 477. — Construction.
- 478. — Retrospective application.
- 479. Concurrent and conflicting statutes or regulations.
- 480. — In general.
- 481. — Federal preemption.
- 482. — State preemption of local laws and actions.
- 483. Regulation in general.
- 484. Radioactive or nuclear waste in general.
- 485. Nuclear power plant wastes and effluents; storage and disposal.
- 486. Nuclear weapons.
- 487. Uranium mining.
- 488. Medical and hospital devices and waste.
- 489. Other particular radiation sources.
- 490. Transportation.
- 491. Cleanup and remediation.
- 492. Administrative agencies and proceedings.
- 493. Enforcement in general; penalties and fines.
- 494. Private right of action; citizen suits.
- 495. Evidence.
- 496. — In general.
- 497. — Presumptions, inferences, and burden of proof.
- 498. — Weight and sufficiency.

**XI. PLANTS AND WILDLIFE.**

- 511. In general.
- 512. Power to regulate.
- 513. Constitutional provisions, statutes, and ordinances.
- 514. — In general.
- 515. — Purpose.
- 516. — Validity.
- 517. — Construction.
- 518. — Retrospective application.
- 519. Concurrent and conflicting statutes or regulations.
- 520. — In general.
- 521. — Federal preemption.
- 522. — State preemption of local laws and actions.
- 523. Regulation and protection in general.

**149E. ENVIRONMENTAL LAW****XI. PLANTS AND WILDLIFE.(Cont'd)**

- 524. — In general.
- 525. — Federal regulation.
- 526. — State and local regulation.
- 527. Plants and animals protected in general.
- 528. Endangered, threatened, or sensitive species.
- 529. "Taking" or harming wildlife.
- 530. Incidental, accidental, or indirect harm.
- 531. Permits and licenses.
- 532. Transportation.
- 533. Commercial use.
- 534. Imports and exports.
- 535. Public plans, projects, and approvals; agency action.
- 536. — In general.
- 537. — Consultation.
- 538. Administrative agencies and proceedings.
- 539. — In general.
- 540. — Regulations and rulemaking in general.
- 541. — Notice and comment.
- 542. — Hearing and determination.
- 543. — Administrative review of administrative decisions.
- 544. Enforcement in general.
- 545. Penalties and fines.
- 546. Searches, seizures, and forfeitures.
- 547. Private right of action; citizen suits.
- 548. Evidence.
- 549. — In general.
- 550. — Presumptions, inferences, and burden of proof.
- 551. — Weight and sufficiency.

**XII. ASSESSMENTS AND IMPACT STATEMENTS.**

- 571. In general.
- 572. Power to regulate.
- 573. Constitutional provisions, statutes, and ordinances.
- 574. Concurrent and conflicting statutes or regulations.
- 575. — In general.
- 576. — Preemption.
- 577. Duty of government bodies to consider environment in general.
- 578. Lead agency; responsible entity.
- 579. Purpose of assessments and statements.

**XII. ASSESSMENTS AND IMPACT STATEMENTS.(Cont'd)**

- 580. Preliminary assessment or report.
- 581. — In general.
- 582. — Necessity.
- 583. — Sufficiency.
- 584. Necessity for preparation of statement, consideration of factors, or other compliance with requirements.
- 585. — In general.
- 586. — "Hard look" test; reasoned elaboration.
- 587. — Major government action.
- 588. — Impacting human environment.
- 589. — Significance in general.
- 590. — Mitigation measures.
- 591. — Scope of project; multiple projects.
- 592. — Categorical exclusion; exemptions in general.
- 593. — Controversy.
- 594. — Negative declaration; statement of reasons.
- 595. — Particular projects.
  - (1). In general.
  - (2). Land use in general.
  - (3). Waters and water courses; dams and flood control.
  - (4). Electricity, generation and transmission; nuclear.
  - (5). Mining; oil and gas.
  - (6). Waste; hazardous materials.
  - (7). Surface transportation; highways and bridges.
  - (8). Aviation.
- 596. — Proceedings.
- 597. Updated or supplemental statements; recirculation.
- 598. Adequacy of statement, consideration, or compliance.
- 599. — In general.
- 600. — Consideration and disclosure of effects.
- 601. — Consideration of alternatives.
- 602. — Mitigation measures.
- 603. — Cost-benefit analysis.
- 604. — Particular projects.
  - (1). In general.
  - (2). Land use in general.

**149E. ENVIRONMENTAL LAW****XII. ASSESSMENTS AND IMPACT STATEMENTS.(Cont'd)**

- (3). Waters and water courses; dams and flood control.
- (4). Electricity, generation and transmission; nuclear.
- (5). Mining; oil and gas.
- (6). Waste; hazardous materials.
- (7). Surface transportation; highways and bridges.
- (8). Aviation.
- 605. — Proceedings; certification and approval.
- 606. Effect of statement or other requirements.
- 607. Effect of deficiency.
- 608. — In general.
- 609. — Lack of statement.
- 610. Time requirements.
- 611. Private right of action; citizen suits.
- 612. Evidence.
- 613. — In general.
- 614. — Presumptions, inferences, and burden of proof.
- 615. — Weight and sufficiency.

**XIII. JUDICIAL REVIEW OR INTERVENTION.**

- 621. In general.
- 622. Powers of courts.
- 623. Constitutional provisions, statutes, and ordinances.
- 624. — In general.
- 625. — Purpose.
- 626. — Validity.
- 627. — Construction.
- 628. — Retrospective application.
- 629. Concurrent and conflicting statutes or regulations.
- 630. — In general.
- 631. — Federal preemption.
- 632. — State preemption of local laws and actions.
- 633. Nature and form of remedy; applicable law.
- 634. Jurisdiction in general.
- 635. Venue.
- 636. Administrative decisions or actions reviewable in general.
- 637. — In general.
- 638. — Land use and conservation.

**XIII. JUDICIAL REVIEW OR INTERVENTION.(Cont'd)**

- 639. — Historical preservation.
- 640. — Water, wetlands, and waterfront conservation.
- 641. — Water pollution.
- 642. — Air pollution.
- 643. — Noise pollution.
- 644. — Waste disposal and management.
- 645. — Hazardous waste and materials.
- 646. — Radiation and nuclear materials.
- 647. — Plants and wildlife; endangered species.
- 648. — Assessments and impact statements.
- 649. Persons entitled to sue or seek review; standing.
- 650. — In general.
- 651. — Cognizable interests and injuries, in general.
- 652. — Organizations, associations, and other groups.
- 653. — Corporations.
- 654. — Government entities, agencies, and officials.
- 655. — Wildlife and natural objects.
- 656. — Other particular parties.
- 657. Parties.
- 658. Conditions precedent in general.
- 659. Notice requirements.
- 660. Prematurity.
- 661. Finality.
- 662. Ripeness.
- 663. Mootness.
- 664. Primary jurisdiction.
- 665. Exhaustion of administrative remedies.
- 666. Preservation of error in administrative proceeding.
- 667. Record of administrative proceeding.
- 668. Time for proceedings.
- 669. — In general.
- 670. — Periods applicable.
- 671. — Accrual, computation, and tolling.
- 672. — Laches.
- 673. Pleading, petition, or application.
- 674. Process or notice.
- 675. Discovery.
- 676. Hearing or rehearing.
- 677. Scope of inquiry on review of administrative decision.

**149E. ENVIRONMENTAL LAW****XIII. JUDICIAL REVIEW OR INTERVENTION.(Cont'd)**

- 678. — In general.
- 679. — Land use and conservation.
- 680. — Historical preservation.
- 681. — Water, wetlands, and waterfront conservation.
- 682. — Water pollution.
- 683. — Air pollution.
- 684. — Noise pollution.
- 685. — Waste disposal and management.
- 686. — Hazardous waste and materials.
- 687. — Radiation and nuclear materials.
- 688. — Plants and wildlife; endangered species.
- 689. — Assessments and impact statements.
- 690. Harmless error.
- 691. Evidence in general.
- 692. Questions of law and fact.
- 693. Instructions.
- 694. Determination, judgment, and relief.
- 695. — In general.
- 696. — Dismissal.
- 697. — Stay of administrative order or proceedings.
- 698. — Remand to administrative agency.
- 699. Injunction.
- 700. — In general.
- 701. — Preliminary injunction.
- 702. Penalties.
- 703. Enforcement; contempt.
- 704. Further review of administrative decision.
- 705. — In general.
- 706. — Decisions reviewable and right of review.
- 707. — Preservation of error.
- 708. — Scope of review.
- 709. — Determination and relief.
- 711. Costs and attorney fees.
- 712. — In general.
- 713. — Land use and conservation.
- 714. — Historical preservation.
- 715. — Water, wetlands, and waterfront conservation.
- 716. — Water pollution.
- 717. — Air pollution.
- 718. — Noise pollution.

**XIII. JUDICIAL REVIEW OR INTERVENTION.(Cont'd)**

- 719. — Waste disposal and management.
- 720. — Hazardous waste or materials.
  - (1). In general.
  - (2). Response and cleanup actions.
- 721. — Radiation and nuclear materials.
- 722. — Plants and wildlife; endangered species.
- 723. — Assessments and impact statements.

**XIV. CRIMINAL RESPONSIBILITY.**

- 731. In general.
- 732. Statutes and ordinances.
- 733. — In general.
- 734. — Purpose.
- 735. — Validity.
- 736. — Construction.
- 737. — Retrospective application.
- 738. Offenses.
- 739. — In general.
- 740. — Land use and conservation.
- 741. — Historical preservation.
- 742. — Water, wetlands, and waterfront conservation.
- 743. — Water pollution.
- 744. — Air pollution.
- 745. — Noise pollution.
- 746. — Waste disposal and management.
- 747. — Hazardous waste and substances.
- 748. — Radiation and nuclear materials.
- 749. — Plants and wildlife; endangered species.
- 750. — Assessments and impact statements.
- 751. Prosecutions in general.
- 752. Indictment and information.
- 753. Evidence.
- 754. — In general.
- 755. — Presumptions, inferences, and burden of proof.
- 756. — Weight and sufficiency.
- 757. — Degree of proof.
- 758. Trial in general.
- 759. Questions of law and fact.
- 760. Instructions.
- 761. Sentence.

**149E. ENVIRONMENTAL LAW****XIV. CRIMINAL RESPONSIBILITY.**(Cont'd)

762. Penalties and fines and disposition thereof.

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**149T. EQUITABLE CONVERSION****SUBJECTS INCLUDED**

Changes in the nature of property as real or personal for equitable purposes in the consideration of the law, whether actual, as by exercise of power of eminent domain, sale for partition, foreclosure, etc., investment of funds in land, etc., or constructive, as necessary to carry into effect directions or agreements contained in deeds, wills, settlements, contracts or other instruments in writing

Nature, requisites, incidents, operation and effect of such changes

Reconversion by act of the parties or by operation of law

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Changes in the nature of property as real or personal by means of physically attaching it to or severing it from other property, see **PROPERTY** ¶5

Wrongful conversion of personal property, see **CONVERSION AND CIVIL THEFT**

100. In general; nature and grounds of doctrine.

101. What law governs.

102. Realty into personalty in general.

103. Exercise of power of eminent domain.

104. Sale of land under order of court.

105. — In general.

106. — Persons under disability.

107. — Extent of conversion.

108. — Time of conversion.

109. Conveyances and contracts.

110. — In general.

111. — Extent of conversion.

112. — Time of conversion.

113. Directions in will.

114. — In general.

115. — Sale for purpose of distribution.

116. — Void or lapsed bequests and failure of purpose of conversion.

117. — Actual sale under power.

118. — Subject to discretion or option.

(1). In general.

(2). Necessity of imperative direction to sell.

(3). Intention of testator.

(4). Sale necessary to fulfill purposes of will.

(5). Option of beneficiary.

(6). Discretion as to time and manner of sale.

119. — Subject to condition or contingency.

120. — Extent of conversion.

121. — Time of conversion.

(1). In general.

(2). Upon death of testator.

122. Personalty into realty.

123. Operation and effect.

124. — In general.

125. — Directions in will.

126. Reconversion.

127. — In general.

128. — Election of beneficiary.

129. — Mode and sufficiency of election.

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**150. EQUITY****SUBJECTS INCLUDED**

Administration of equity as a distinct system of jurisprudence, either by separate courts of chancery or by other courts exercising chancery powers

Nature, grounds, limits and subjects of jurisdiction in equity in general

Principles and maxims of equity jurisprudence

Procedure peculiar to suits in equity, more particularly in states where this and other procedures have not been assimilated under codes and practice acts

**150. EQUITY****SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Appeals from decrees or orders in equity, see  
APPEAL AND ERROR, COURTS

Costs in equitable cases, see COSTS, FED-  
ERAL CIVIL PROCEDURE

Courts of equity, organization and general  
conduct of business, see COURTS and  
FEDERAL COURTS

Distinction between legal and equitable  
causes of action, and equitable relief and  
equitable defenses at common law or under  
statutes abolishing such distinction, see AC-  
TION, PLEADING and specific topics  
dealing with particular proceedings in ac-  
tions

Particular equitable estates, rights and defens-  
es, see PROPERTY III(C), ESTOPPEL,  
LIENS, MORTGAGES AND DEEDS OF  
TRUST, TRUSTS, and other specific top-  
ics

Particular equitable remedies, see AC-  
COUNT, CANCELLATION OF INSTRU-  
MENTS, INJUNCTION, SPECIFIC PER-  
FORMANCE and other specific topics

Particular persons or property or estates  
therein, equity jurisdiction and its exercise,  
see INFANTS, PARTNERSHIP and other  
specific topics

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**I. JURISDICTION, PRINCIPLES, AND  
MAXIMS, ¶1-66.**

(A) NATURE, GROUNDS, SUBJECTS,  
AND EXTENT OF JURISDIC-  
TION IN GENERAL, ¶1-42.

(B) REMEDY AT LAW AND MULTI-  
PLICITY OF SUITS, ¶43-53.

(C) PRINCIPLES AND MAXIMS OF  
EQUITY, ¶54-66.

**II. LACHES AND STALE DEMANDS,  
¶67-88.**

**III. PARTIES AND PROCESS, ¶89-127.**

**IV. PLEADING, ¶128-335.**

(A) ORIGINAL BILL, ¶128-153.

(B) PLEA, ANSWER, AND DISCLAIM-  
ER, ¶154-194.

(C) CROSS-BILL AND PLEA AND AN-  
SWER THERETO, ¶195-206.

(D) REPLICATION, ¶207-213.

(E) DEMURRER, EXCEPTIONS, AND  
MOTIONS, ¶214-264.

(F) AMENDED AND SUPPLEMENTAL  
PLEADINGS AND REVIVOR,  
¶265-309.

**IV. PLEADING—Cont'd**

(G) SIGNATURE, INDORSEMENT,  
VERIFICATION, FILING, AND  
SERVICE, ¶310-323.

(H) ISSUES, PROOF, AND VARIANCE,  
¶324-327.

(I) DEFECTS AND OBJECTIONS, AND  
WAIVER THEREOF, ¶328-335.

**V. EVIDENCE, ¶336-348.**

**VI. TAKING AND FILING PROOFS,  
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**VII. DISMISSAL BEFORE HEARING,  
¶359-368.**

**VIII. HEARING, SUBMISSION OF IS-  
SUES TO JURY, AND REHEAR-  
ING, ¶369-392.**

**IX. MASTERS AND COMMISSIONERS,  
AND PROCEEDINGS BEFORE  
THEM, ¶393-414.**

**X. DECREE AND ENFORCEMENT  
THEREOF, ¶415-441.**

**XI. BILL OF REVIEW, ¶442-466.**

**I. JURISDICTION, PRINCIPLES,  
AND MAXIMS.**

**(A) NATURE, GROUNDS, SUBJECTS, AND EXTENT  
OF JURISDICTION IN GENERAL.**

1. Nature and source of jurisdiction.
2. Constitutional and statutory provisions.
3. Grounds of jurisdiction in general.
4. Accident.
5. Mistake.
6. — In general.
7. — Of law.
8. — Of fact.
9. — Of expression.
10. Fraud.
11. — In general.
12. — Actual fraud.
13. — Inequitable or unconscionable  
transactions.
14. — As to third persons.
15. Subjects of jurisdiction in general.
16. Personal status and rights.
17. Property and rights therein in general.
18. Community or uncertainty of ownership  
or interest.
19. Equitable estates or interests.
20. Liens.
21. Fiduciary rights and obligations.
22. Administration of estates.
23. Contracts in general.
24. Penalties and forfeitures.

**150. EQUITY****I. JURISDICTION, PRINCIPLES,  
AND MAXIMS.(Cont'd)**

- 25. Illegal contracts, combinations, and transactions.
- 26. Torts.
- 27. Crimes.
- 28. Criminal prosecutions.
- 29. Powers and acts of public officers.
- 31. Jurisdiction of the person.
- 32. Jurisdiction of property or other subject-matter.
- 33. Amount or value in controversy.
- 34. Trivial matters.
- 35. Ancillary and incidental jurisdiction.
- 36. Exercise of jurisdiction beyond territorial limits.
- 37. Retention of jurisdiction acquired.
- 38. — In general.
- 39. — Complete relief.
  - (1). In general.
  - (2). Legal relief in general.
  - (3). Damages.
  - (4). Relief to defendant.
- 40. — Alternative legal relief.
- 41. — Denial of equitable relief.
- 42. Waiver of objections.
  - (1). In general.
  - (2). Failure to raise objection by pleading.

**(B) REMEDY AT LAW AND MULTIPLICITY OF SUITS.**

- 43. Existence of remedy at law and effect in general.
- 44. Exclusive or concurrent jurisdiction.
- 45. Adequacy of legal remedy.
- 46. — In general.
- 47. — Title to or possession of property.
  - (.5). In general.
  - (1). Realty.
  - (2). Personality.
- 48. — Performance or breach of contract.
- 49. Enlargement of legal remedy.
- 50. Statutory creation of remedy.
- 51. Multiplicity of suits.
  - (1). In general.
  - (2). What constitutes multiplicity in general.
  - (3). Contractual or property rights.
- 52. Circuity of action.

**I. JURISDICTION, PRINCIPLES,  
AND MAXIMS.(Cont'd)**

- 53. Waiver of objections.
  - (1). In general.
  - (2). Failure to plead objection.
  - (3). Dismissal on court's own motion.
  - (4). Objection at hearing or after decree.

**(C) PRINCIPLES AND MAXIMS OF EQUITY.**

- 54. Application and operation in general.
- 55. Equity suffers no right to be without a remedy.
- 56. Equity regards substance rather than form.
- 57. Equity regards that as done which ought to be done.
- 59. Equality is equity.
- 60. Where equities are equal, the first in time will prevail.
- 61. Where equities are equal, the law will prevail.
- 62. Equity follows the law.
- 63. Equity acts in personam, not in rem.
- 64. Equity aids the vigilant, not those who sleep on their rights.
- 65. He who comes into equity must come with clean hands.
  - (1). In general.
  - (2). Nature of unconscionable conduct.
  - (3). Conduct with respect to different transactions.
- 66. He who seeks equity must do equity.

**II. LACHES AND STALE DEMANDS.**

- 67. Nature and elements in general.
- 68. Grounds and essentials of bar.
- 69. — In general.
- 70. — Knowledge of facts.
- 71. — Lapse of time.
  - (1). In general.
  - (2). What constitutes unreasonable delay in general.
  - (3). Suits relating to title or possession of real estate.
  - (4). Acquiescence.
- 72. — Prejudice from delay in general.
  - (1). In general.
  - (2). Rights of third persons in general.

**150. EQUITY****II. LACHES AND STALE DEMANDS.(Cont'd)**

- (3). Death of adverse party to original transaction.
- (4). Change in value of property, expenditures, and improvements.
- 73. — Loss of evidence.
- 74. Excuses.
- 75. — In general.
- 76. — Personal disabilities.
- 77. — Pecuniary condition, insolvency, or bankruptcy.
- 78. — Absence or nonresidence.
- 79. — Negligence of attorney or other representative.
- 80. — Fraud, concealment, or other act of adverse party.
- 81. — Negotiations and agreements between parties.
- 82. — Pendency of legal proceedings.
- 83. — Recognition of right by adverse party.
- 84. Application of doctrine in general.
- 85. Rights of public.
- 86. Effect of possession of real property involved.
- 87. Following statute of limitations.
  - (1). In general.
  - (2). Delay short of statutory period.
  - (3). Loss of legal remedy by limitations.
- 88. Waiver of objections.

**III. PARTIES AND PROCESS.**

- 89. Parties in general.
- 89.1. — In general.
- 90. — Necessity and effect of interest.
- 91. — Nature and extent of interest.
- 92. — Persons joined for purpose of discovery.
- 93. Necessary or indispensable parties.
- 93.1. — In general.
- 94. — Persons indispensable to complete and final determination.
- 95. — Persons legally represented.
- 96. — Grounds for omitting or dispensing with parties.
- 97. — One or more suing or defending on behalf of all.
- 98. Proper parties.
- 98.1. — In general.

**III. PARTIES AND PROCESS.(Cont'd)**

- 99. — Interest in controversy separable.
- 100. — Interest in subject-matter without interest in controversy.
- 101. — Dispensing with parties.
- 102. Complainants.
- 103. — In general.
- 104. — Real party in interest.
- 105. — Joinder.
- 106. Defendants.
- 107. — In general.
- 108. — Joinder.
- 109. Making party complainant or defendant.
- 110. — In general.
- 111. — Party refusing to join as complainant.
- 112. — Change of position.
- 113. Parties to original suit as parties to ancillary suit.
- 114. Intervention.
- 115. Bringing in new parties.
- 116. Substitution.
- 117. Defects and objections as to parties.
- 118. Amendment as to parties.
- 119. Process in general.
- 120. Subpoena.
- 120.1. — In general.
- 121. — Nature and necessity.
- 122. — Issuance, form, and requisites.
- 123. — Service.
- 124. — Return.
- 125. — Defects, objections, and amendment.
- 126. Attachment against the person.
- 127. Appearance.

**IV. PLEADING.****(A) ORIGINAL BILL.**

- 128. Nature and office.
- 129. Form and requisites in general.
- 130. Title or caption.
- 131. Address or direction.
- 132. Introduction or statement as to parties.
- 133. Premises or statement of cause of action.
- 134. Confederating part.
- 135. Charging part.
- 136. Averment of jurisdiction.
- 137. Interrogating part.
- 138. Prayer for relief.



**150. EQUITY****IV. PLEADING.(Cont'd)**

- 139. Prayer for process.
- 140. Interrogatories.
- 141. Form and sufficiency of allegations in general.
  - (1). In general.
  - (2). Title or interest of plaintiffs.
- 142. Directness and positiveness or argumentativeness.
- 143. Certainty.
- 144. Consistency, ambiguity, or repugnancy.
- 145. Double aspect.
- 146. Multifariousness.
- 147. — In general.
- 148. — Misjoinder of causes of action.
  - (1). In general.
  - (2). Several grounds for single relief.
  - (3). Prayer for different kinds of relief in general.
  - (4). Legal and equitable demands.
  - (5). Injunction and other relief.
  - (6). Suit to reform, cancel, or set aside different instruments.
  - (7). Partition and other relief.
- 149. — Misjoinder of complainants.
- 150. — Misjoinder of defendants.
  - (.5). In general.
    - (1). Common or distinct interests or liabilities in general.
    - (2). Separate acts or transactions affecting same property.
    - (3). Suit for mortgage foreclosure.
    - (4). Suits relating to administration of decedents' estates.
    - (5). Suit for partition and other relief.
    - (6). Suit to enforce creditors' claims.
    - (7). Several capacities of sole defendant.
- 151. Impertinence and scandal.
- 152. Exhibits.
- 153. Construction and operation.

**(B) PLEA, ANSWER, AND DISCLAIMER.**

- 154. Mode of pleading defenses.
- 155. Plea and answer to same bill.
- 156. Pleas.
  - 156.1. — In general.
- 157. — Nature and office.
- 158. — Necessity.

**IV. PLEADING.(Cont'd)**

- 159. — Grounds in general.
- 160. — To the jurisdiction.
- 161. — To the person.
- 162. — To the bill.
- 163. — In bar of relief.
- 164. — In bar of discovery.
- 165. — Time for filing.
- 166. — Form and requisites.
- 167. — Sufficiency.
- 168. — Scope and extent.
- 169. — Answer in support of plea.
- 170. — Plea overruled by answer.
- 171. — Abandonment or withdrawal.
- 172. — Admissions by plea.
- 173. — Setting down plea for hearing.
- 174. — Reference to master.
- 175. — Hearing and determination.
- 176. — Operation and effect of decision.
- 177. Answer.
  - 177.1. — In general.
- 178. — Nature and office.
- 179. — Necessity.
- 180. — Defenses in general.
- 181. — Time for filing.
- 182. — Form and requisites.
- 183. — Plea standing as answer.
- 184. — Sufficiency as defense in general.
- 185. — Scope and extent.
- 186. — Denials and admissions.
- 187. — Allegations of new matter.
- 188. — Necessity for discovery.
- 189. — Sufficiency of discovery in general.
- 190. — Responsiveness.
- 191. — Impertinence and scandal.
- 192. Disclaimer.
- 193. Attachment to compel answer.
- 194. Failure to answer.

**(C) CROSS-BILL AND PLEA AND ANSWER THERETO.**

- 195. Nature and office of cross-bill.
- 196. Necessity for cross-bill.
- 197. Right to file cross-bill.
- 198. Leave or direction of court to file cross-bill.
- 199. Jurisdiction of subject-matter.
- 200. Time for filing cross-bill.
- 201. Form and requisites of cross-bill.

**150. EQUITY****IV. PLEADING.(Cont'd)**

- 202. Sufficiency of cross-bill.
- 203. Answer as cross-bill.
- 204. Parties and process.
- 205. Plea.
- 206. Answer.

**(D) REPLICATION.**

- 207. Nature and office.
- 208. Necessity.
- 209. Right to reply.
- 210. Time for filing.
- 211. Form and requisites.
- 212. Sufficiency.
- 213. Failure to reply.

**(E) DEMURRER, EXCEPTIONS, AND MOTIONS.**

- 214. Mode of making objections to pleading.
- 215. Demurrer and plea or answer to same bill.
- 216. Nature and office of demurrer.
- 217. Necessity of demurrer.
- 218. Grounds for demurrer to bill.
- 219. — In general.
- 220. — Objections to jurisdiction.
- 221. — Objections to person of complainant.
- 222. — Objections to form or frame of bill.
- 223. — Objections to substance of bill.
- 224. — Objections to discovery.
- 225. Right to demur.
- 226. Joint demurrers.
- 227. Time for filing demurrer.
- 228. Form and requisites of demurrer.
- 229. Demurrer incorporated in answer.
- 230. Sufficiency of demurrer.
- 231. Scope and extent of demurrer in general.
- 232. Demurrer to bill good in part.
- 233. General demurrer.
- 234. Special demurrer.
- 235. Speaking demurrer.
- 236. Demurrer ore tenus.
- 237. Demurrer overruled by plea or answer.
- 238. Abandonment or withdrawal of demurrer.
- 239. Admissions by demurrer.
- 240. Setting down demurrer for hearing.
- 241. Hearing and determination on demurrer.

**IV. PLEADING.(Cont'd)**

- 242. Operation and effect of decision on demurrer.
- 242.1. — In general.
- 243. — Overruling demurrer.
- 244. — Answer after demurrer overruled.
- 245. — Sustaining demurrer to bill.
- 246. — Sustaining demurrer as to part of bill.
- 247. — Amendment after demurrer sustained.
- 248. Failure to demur.
- 249. Nature and office of exceptions.
- 250. Necessity of exceptions.
- 251. Grounds for exceptions to answer.
- 251.1. — In general.
- 252. — Insufficiency.
- 253. — Impertinence or scandal.
- 254. Time for filing exceptions.
- 255. Form and requisites of exceptions.
- 255.5. Withdrawal or waiver of exceptions.
- 256. Reference of exceptions to master.
- 257. Hearing and determination on exceptions.
- 258. Operation and effect of decision on exceptions.
- 259. Further answer after exceptions sustained.
- 260. Failure to except.
- 261. Motions relating to pleadings.
- 262. — In general.
- 263. — Striking out pleading.
- 264. — Striking out part of pleading.

**(F) AMENDED AND SUPPLEMENTAL PLEADINGS AND REVIVOR.**

- 265. Right to amend pleadings in general.
- 266. Amendment as of course.
- 267. Discretion of court as to amendment.
- 268. Amendment of bill.
- 269. — In general.
- 270. — Sworn bill.
- 271. — Condition of cause.
- 272. — Matter arising after filing of bill.
- 273. — Matter making new case.
- 274. — As to relief prayed.
- 275. — Operation and effect in general.
- 276. — Plea or answer to amended bill.
- 277. — Demurrer to amended bill.

**150. EQUITY****IV. PLEADING.**(Cont'd)

- 278. Amendment of plea or answer.
- 279. — In general.
- 280. — Sworn plea or answer.
- 281. — Condition of cause.
- 282. — Matter arising after pleading.
- 283. — Matter making new defense.
- 284. — Operation and effect in general.
- 285. — Exceptions to amended answer.
- 286. Amendment of cross-bill.
- 287. Amendment of demurrer.
- 288. Amendment to conform to proofs.
- 289. Amendment on court's own motion.
- 290. Application for leave to amend, and determination thereon.
- 291. Conditions on amendment.
- 292. Mode of making amendment.
- 293. Form and sufficiency of amended pleading.
- 294. Supplemental bill or cross-bill.
- 294.1. — In general.
- 295. — Nature and office.
- 296. — Grounds.
- 297. — Leave of court.
- 298. — Form and sufficiency.
- 299. — Construction and operation.
- 300. — Plea and answer.
- 301. — Demurrer.
- 302. Further or additional answer.
- 303. Bill of revivor.
- 303.1. — In general.
- 304. — Nature and office.
- 305. — Grounds.
- 306. — Form and sufficiency.
- 307. — Construction and operation.
- 308. — Plea and answer.
- 309. — Demurrer.

**(G) SIGNATURE, INDORSEMENT, VERIFICATION, FILING, AND SERVICE.**

- 310. Signature of party.
- 311. Signature and certificate of counsel.
- 311.5. Indorsements.
- 312. Necessity of verification.
- 312.1. — In general.
- 313. — Of bill.
- 314. — Of plea.
- 315. — Of answer in general.

**IV. PLEADING.**(Cont'd)

- 316. — Waiver by bill of answer under oath.
- 317. — Of replication.
- 318. — Of amended pleadings.
- 319. Sufficiency of verification.
- 320. Affidavit and certificate accompanying plea or demurrer.
- 321. Filing and notice thereof.
- 322. Service.
- 323. Withdrawal of pleadings.

**(H) ISSUES, PROOF, AND VARIANCE.**

- 324. Issues in general.
- 325. Matters to be proved.
- 326. Evidence admissible under pleadings.
- 327. Variance between allegations and proof.

**(I) DEFECTS AND OBJECTIONS, AND WAIVER THEREOF.**

- 328. Defects and objections which may be cured or waived.
- 329. Cure by subsequent pleading.
- 330. Waiver of objections to pleadings in general.
- (1). In general.
- (2). Multifariousness.
- 331. Objections to rulings on demurrer, exceptions, or motions.
- 332. Objections to amendments.
- 333. Want of signature, certificate of counsel, or verification.
- 334. Objections to evidence as not within issues.
- 335. Objections on ground of variance.

**V. EVIDENCE.**

- 336. Rules of evidence and mode of proof in general.
- 337. Pleadings as evidence in general.
- 338. Answer as evidence.
- 339. — In general.
- 340. — Responsiveness.
- 341. — Directness and positiveness.
- 342. — Answer not under oath.
- 343. — Waiver of answer under oath.
- 344. — For or against codefendant.
- 345. — Evidence to overcome answer.
- 346. Presumptions and burden of proof.

**150. EQUITY****V. EVIDENCE.(Cont'd)**

- 347. Admissibility.
- 348. Weight and sufficiency.

**VI. TAKING AND FILING PROOFS.**

- 349. Taking in general.
- 350. Time for taking.
- 351. Examination of witnesses.
- 352. — In general.
- 353. — Cross-examination and re-examination.
- 354. — Privilege of witness.
- 354.5. Production of documents.
- 355. Depositions.
- 356. Filing proofs.
- 357. Publication.
- 358. Objections to evidence.

**VII. DISMISSAL BEFORE HEARING.**

- 359. Voluntary dismissal.
- 360. Involuntary dismissal.
- 361. — In general.
- 362. — Grounds.
- 363. — Motion and determination thereof.
- 364. — Dismissal on court's own motion.
- 365. — Dismissal without prejudice.
- 366. — Conditions.
- 367. — Operation and effect.
- 368. Setting aside, and reinstatement of cause.

**VIII. HEARING, SUBMISSION OF ISSUES TO JURY, AND REHEARING.**

- 369. Condition of cause.
- 370. Hearing of causes together.
- 371. Separate hearings in same cause.
- 372. Setting down cause for hearing.
- 373. Hearing on bill and answer.
- 374. Notice of hearing and preliminary proceedings.
- 375. Continuance.
- 376. Submission of issues to jury.
- 377. — In general.
- 378. — Issues proper for jury.
- 379. — Proceedings for award and framing of issues.
- 380. — Proceedings at trial.
- 381. — Verdict and findings.
- 382. — New trial.

**VIII. HEARING, SUBMISSION OF ISSUES TO JURY, AND REHEARING.(Cont'd)**

- 383. Direction of action at law.
- 384. Conduct of hearing in general.
- 385. Reception of evidence.
- 386. Arguments of counsel and briefs.
- 387. Submission of cause.
- 388. Dismissal at final hearing.
- 389. Decision.
- 390. Objections and exceptions.
- 391. Waiver and correction of irregularities and errors.
- 392. Rehearing.

**IX. MASTERS AND COMMISSIONERS, AND PROCEEDINGS BEFORE THEM.**

- 393. Appointment, qualification, and tenure.
- 394. Compensation and fees.
- 395. Powers and functions in general.
- 396. Liabilities for official acts.
- 397. Liabilities for misconduct or negligence.
- 398. Liabilities on official bond.
- 399. Power to refer.
- 400. Discretion as to reference.
- 401. Questions and matters proper for reference.
- 402. Application for reference and proceedings thereon.
- 403. Order of reference.
- 404. Evidence on reference.
- 405. Hearing.
  - (1). In general.
  - (2). Reopening case.
- 406. Report.
- 406.1. — In general.
- 407. — Form and sufficiency in general.
- 408. — Return of evidence.
- 409. — Operation and effect.
- 410. Objections and exceptions to report and hearing thereof.
  - (.5). In general.
    - (1). Necessity of objection and exception.
    - (2). Time for objecting and excepting.
    - (3). Right to except and waiver thereof.
    - (4). Form and sufficiency of exceptions.
    - (5). Grounds.
    - (6). Purpose and scope of exceptions.

**150. EQUITY****IX. MASTERS AND COMMISSIONERS,  
AND PROCEEDINGS BEFORE  
THEM.(Cont'd)**

- (7). Hearing.
- 411. Disposition of report in general.
- 412. Recommittal.
- 413. Confirmation of report.
- 414. Setting aside report.

**X. DECREE AND ENFORCEMENT THEREOF.**

- 415. Nature and essentials in general.
- 416. Decree on consent.
- 417. Decree pro confesso.
- 417.1. — In general.
- 418. — Requisites and validity.
- 419. — Opening or setting aside.
- 420. — Effect.
- 421. Interlocutory decree.
- 422. Final decree.
- 423. Nature and extent of relief in general.
- 424. Incidental or alternative relief.
- 425. Denial of relief.
- 426. Relief to defendant.
- 427. Conformity to pleadings, proofs, and findings.
  - (1). In general.
  - (2). Conformity to prayer.
  - (3). Relief under prayer for general relief.
- 428. Entry and record.
- 429. Amendment or modification.
- 430. Opening or vacating.
  - (1). In general.
  - (2). Grounds.
  - (3). Parties and proceedings.
- 431. Construction and operation.
- 432. Performance and satisfaction.
- 433. — In general.
- 434. — Payment of money.
- 435. — Performance of specific act.
- 436. — Execution of written instrument.
- 437. Enforcement in general.
- 438. Execution.
- 439. Attachment against the person.
- 440. Sequestration.
- 441. Bill to enforce decree.

**XI. BILL OF REVIEW.**

- 442. Nature and scope of remedy.

**XI. BILL OF REVIEW.(Cont'd)**

- 443. Decrees reviewable.
- 444. Grounds.
- 445. — In general.
- 446. — Errors and irregularities.
- 447. — New matter.
  - (1). In general.
  - (2). Materiality and effect of new evidence.
  - (3). Cumulative evidence.
  - (4). Diligence.
- 448. Conditions precedent.
- 449. Defenses.
- 450. Right of review.
- 451. Jurisdiction.
- 452. Limitations and laches.
- 453. Leave to file bill.
- 453.1. — In general.
- 454. — Necessity.
- 455. — Discretion of court.
- 456. — Application and proceedings thereon.
- 457. Parties.
- 458. Process.
- 459. Stay of proceedings under former decree.
- 460. Form and sufficiency.
- 461. Plea and answer.
- 462. Demurrer to bill.
- 463. Evidence.
- 464. Hearing and determination.
- 465. Decree.
- 466. Operation and effect of reversal of former decree.

**151. ESCAPE****SUBJECTS INCLUDED**

Voluntary departure and attempts of prisoners to depart from lawful custody of officers or other persons, or from any place where they are lawfully confined, with or without force or fraud

Voluntary or negligent allowance by officers of such departure, aiding such escape, and

**156. ESTOPPEL**

concealing or harboring escaped prisoners, as offenses

Nature and elements of the crimes of escape, jail breaking, prison breach, etc.

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Arrest, resisting or obstructing, see OBSTRUCTING JUSTICE

Delivery of prisoners from custody by others, see RESCUE

Officers' civil liabilities for permitting escape, see PUBLIC EMPLOYMENT, SHERIFFS AND CONSTABLES and other specific topics

1. Nature and elements of offenses in general.
2. Escape by prisoners without force.
3. Escape suffered by officer.
4. Prison breach or jail breaking.
5. Aiding escape.
- 5.5. Attempts.
6. Defenses.
7. Persons liable.
9. Indictment or information.
10. Evidence.
11. Trial.
13. Sentence and punishment.

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**SUBJECTS INCLUDED**

Preclusion of persons from asserting or denying matters of fact, rights or claims contrary to or inconsistent with previous allegations, admissions, denials, acts or conduct of the same persons or those under whom they claim

Nature and grounds of such preclusion, and waiver in general

Operation and effect of estoppel as to rights and titles subsequently acquired as well as those previously existing

Pleading estoppel and evidence relating thereto

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Judgment, conclusiveness and effect, though described as estoppel by verdict or collateral estoppel, see RES JUDICATA

Particular classes of persons, liability to be estopped, see INFANTS and other specific topics

Particular rights and defenses, estoppel to assert because of facts peculiar to circumstances under which such rights and defenses arise, see LANDLORD AND TENANT, LIMITATION OF ACTIONS, INSURANCE and other specific topics

Waiver of particular rights, see CONTRACTS and other specific topics

I. BY RECORD, ¶1-11.

II. BY DEED, ¶12-51.

(A) CREATION AND OPERATION IN GENERAL, ¶12-34.

(B) ESTATES AND RIGHTS SUBSEQUENTLY ACQUIRED, ¶35-51.

III. EQUITABLE ESTOPPEL, ¶52-121.

(A) NATURE AND ESSENTIALS IN GENERAL, ¶52-62.8.

(B) GROUNDS OF ESTOPPEL, ¶63-96.

(C) PERSONS AFFECTED, ¶97-98.

(D) MATTERS PRECLUDED, ¶99-106.

(E) PLEADING, ¶107-115.

(F) EVIDENCE, ¶116-118.

(G) TRIAL, ¶119-121.

**I. BY RECORD.**

1. Nature and elements in general.

2. Judicial records in general.

3. Pleadings.

(1). In general.

(2). Declaration, complaint, petition or bill.

(3). Plea, answer, or cross-bill.

4. Petitions and affidavits.

5. Stipulations and admissions.

6. Motions and orders.

7. Verdicts and findings.

8. Persons to whom estoppel is available.

9. Persons estopped.

**156. ESTOPPEL****I. BY RECORD.(Cont'd)**

- 10. Matters precluded.
- 11. Pleading estoppel.

**II. BY DEED.****(A) CREATION AND OPERATION IN GENERAL.**

- 12. Nature and elements in general.
- 13. Instruments operating as estoppel.
- 14. — In general.
- 15. — Deeds.
- 16. — Bills of sale.
- 17. — Mortgages.
- 18. — Bonds and other obligations.
- 19. — Defective, inoperative, or invalid instruments and transactions.
- 20. Grounds of estoppel.
- 21. — In general.
- 22. — Recitals.
  - (1). In general.
  - (2). In deeds and mortgages.
  - (3). In bonds.
- 23. — Covenants.
- 24. Operation and effect in general.
- 25. Persons to whom estoppel is available.
- 26. Persons estopped in general.
- 27. Grantors or mortgagors and privies.
  - (1). In general.
  - (2). Privies.
- 28. Effect, as against heir, devisee, or donee, of covenant of ancestor or donor.
- 29. Grantees.
- 29.1. Mortgages.
- 30. Remote grantees.
- 31. Persons acting in particular character or capacity.
- 32. Matters precluded.
  - (5). In general.
  - (1). By deed.
  - (2). By lease.
  - (3). By mortgage or trust deed.
  - (4). By bond.
- 33. Estoppel against estoppel.
- 34. Pleading estoppel.

**(B) ESTATES AND RIGHTS SUBSEQUENTLY ACQUIRED.**

- 35. Estoppel as to title subsequently acquired in general.
- 36. Instruments operating on title subsequently acquired.

**II. BY DEED.(Cont'd)**

- 37. — In general.
- 38. — Conveyances with covenants.
- 39. — Conveyances without covenants.
- 40. Grounds of estoppel.
- 41. — In general.
- 42. — Liability on covenants.
- 43. Persons to whom estoppel is available.
- 44. Persons estopped in general.
- 45. Grantors or mortgagors and privies.
- 46. Estates or rights affected.
- 47. — In general.
- 48. — Title acquired from or adversely to grantee.
- 49. — Title acquired in different right.
- 50. Actual transfer of title by operation of law.
- 51. Pleading title by estoppel.

**III. EQUITABLE ESTOPPEL.****(A) NATURE AND ESSENTIALS IN GENERAL.**

- 52. Nature and application of estoppel in pais.
  - (1). In general.
  - (2). Basis of estoppel.
  - (3). Estoppel by conduct.
  - (4). When estoppel arises.
  - (5). Application in general.
  - (6). Doctrine not favored.
  - (7). Effect of estoppel.
  - (8). Particular applications.
- 52.5. What law governs.
- 52.10. Waiver distinguished.
  - (1). In general.
  - (2). Nature and elements of waiver.
  - (3). Implied waiver and conduct constituting waiver.
  - (4). Rights subject to waiver.
- 52.15. Essential elements.
- 53. Intent.
- 54. Knowledge of facts.
- 55. Reliance on adverse party.
- 56. Acts done or omitted, and change of position.
- 57. Benefit to person against whom estoppel is asserted.
- 58. Prejudice to person setting up estoppel.
- 59. Default or wrongful act of person setting up estoppel.
- 60. Certainty as to grounds.

**156. ESTOPPEL****III. EQUITABLE ESTOPPEL.(Cont'd)**

- 61. Estoppel against estoppel.
- 62. Estoppel against public, government, or public officers.
  - 62.1. — In general.
  - 62.2. — States and United States.
    - (.5). In general.
    - (1). State government, officers, and agencies in general.
    - (2). Particular state officers, agencies or proceedings.
    - (3). United States government, officers, and agencies in general.
    - (4). Particular United States officers, agencies, or proceedings.
  - 62.3. — Counties and subdivisions thereof.
  - 62.4. — Municipal corporations in general.
  - 62.5. — Acts of officers or boards.
  - 62.6. — Contracts.
  - 62.7. — Admissions.
  - 62.8. — Acquiescence.

**(B) GROUNDS OF ESTOPPEL.**

- 63. Inconsistency of conduct and claims in general.
- 64. Assumption of capacity or authority.
- 65. Assertion of title or right in general.
- 66. Possession or acts of ownership under title or claim.
- 67. Claim under written instrument.
- 68. Claim or position in judicial proceedings.
  - (1). In general.
  - (2). Claim inconsistent with previous claim or position in general.
  - (3). Claim inconsistent with contract or title previously asserted.
  - (4). Defense or objection inconsistent with previous claim or position in general.
  - (5). Position inconsistent with previous assertion of title in another in general.
  - (6). By levy of attachment, execution, or garnishment.
- 69. Testimony as witness.
- 70. Failure to assert title or right.
  - (.5). In general.
  - (1). Failure to assert title.
  - (2). Failure to assert claim.
  - (3). Failure to assert mortgage or other lien.

**III. EQUITABLE ESTOPPEL.(Cont'd)**

- 71. Disclaimer.
- 72. Acts making injury possible as between actor and another equally blameless.
- 73. Clothing another with apparent title or authority.
  - 73.1. — In general.
- 74. — Real property.
  - (1). In general.
  - (2). Conveying or procuring conveyance to another.
  - (3). Release of interest.
  - (4). Placing another in possession.
- 75. — Personal property.
- 76. — Relying and acting on apparent title or authority.
- 77. Dealing with person asserting title or exercising authority.
- 78. Contracts.
  - (1). In general.
  - (2). Recital or recognition of rights or facts.
  - (3). Contracts relating to real estate.
  - (4). Promises to assume liability.
  - (5). Agreements to accept payment or reimbursement.
  - (6). Relying or acting on contract.
- 79. Stipulations and consents in judicial proceedings.
- 80. Official certificates or acts.
- 81. Requests.
- 82. Representations.
- 83. — In general.
  - (1). In general.
  - (2). Ownership of property.
  - (3). Existence and extent of liens and claims.
  - (4). Existence of roads, streets, and alleys.
  - (5). Validity and terms of contracts and conveyances.
  - (6). As to financial standing.
- 84. — Matters of fact or of opinion.
- 85. — Future events; promissory estoppel.
- 86. — Validity of bills or notes.
- 87. — Relying and acting on representations.
- 88. Admissions and receipts.
  - (1). In general.
  - (2). Relying or acting on admission.
  - (3). Receipts.



**156. ESTOPPEL****III. EQUITABLE ESTOPPEL (Cont'd)**

- 89. Acquiescence.
- 89.1. — In general.
- 90. — Assent to or ratification of acts of others in general.
  - (1). In general.
  - (2). Contracts in general.
  - (3). Accounts or settlements.
  - (4). Acquiescence in use or obstruction of water course.
  - (5). Participation in elections.
  - (6). Acquiescence of stockholders and creditors in acts of corporation.
- 91. — Assent to or participation in judicial proceedings.
  - (1). In general.
  - (2). Partition proceedings.
  - (3). Compromises.
- 92. — Acceptance of benefits.
  - (1). In general.
  - (2). Contracts.
  - (3). Sale and conveyance or mortgage of property.
  - (4). Compensation for taking land for public use.
- 93. — Permitting improvements or expenditures.
  - (1). In general.
  - (2). Erection of buildings.
  - (3). Building of dams.
  - (4). Construction of railroad.
  - (5). Improvements and expenditures by purchasers of land.
  - (6). Improvements and expenditures by purchasers at judicial sale.
  - (7). Acquiescence in use, obstruction, or diversion of water.
  - (8). Knowledge of facts.
- 94. — Permitting sale or mortgage of property.
  - (1). In general.
  - (2). Public or judicial sale.
- 95. Silence.
- 96. Negligence.

**(C) PERSONS AFFECTED.**

- 97. Persons to whom estoppel is available.
- 98. Persons estopped.
  - (1). In general.
  - (2). Purchasers from person creating estoppel.

- (3). Heirs or executor of person creating estoppel.
- (4). Creditors of person creating estoppel.

**(D) MATTERS PRECLUDED.**

- 99. Extent of estoppel in general.
- 100. Personal status or rights.
- 101. Title or claim to property.
- 102. Rights and liabilities under contracts.
- 103. Remedies.
- 104. Rights, remedies, or objections regarded as waived.
- 105. Matters adjudicated.
- 106. Availability at law.

**(E) PLEADING.**

- 107. Pleading as element of cause of action.
- 108. Demurrer raising defense.
- 109. Pleading as defense.
- 109.1. — In general.
- 110. — Necessity.
- 111. — Mode and form of plea or answer.
- 112. — Sufficiency of allegations.
- 113. — Reply or demurrer to plea or answer.
- 114. Pleading in avoidance of defense.
- 115. Issues, proof, and variance.

**(F) EVIDENCE.**

- 116. Presumptions and burden of proof.
- 117. Admissibility of evidence.
- 118. Weight and sufficiency of evidence.

**(G) TRIAL.**

- 119. Questions for jury.
- 120. Instructions.
- 121. Verdict, findings, and judgment.

**157. EVIDENCE****SUBJECTS INCLUDED**

Means of ascertaining the truth respecting matters of fact in issue in civil actions and proceedings in general

## 157. EVIDENCE

Admissibility for that purpose of relevant facts, statements, oral or written, opinions, character, reputation, etc.

Modes of proof and production of evidence other than testimony of witnesses, particularly documentary evidence, and exclusion of oral by documentary evidence

Burden of making proof, and operation of presumptions

Sufficiency and effect of evidence in civil cases in general

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Acknowledgment and record of written instruments, see ACKNOWLEDGMENT, RECORDS

Administrative proceedings, evidence in, see ADMINISTRATIVE LAW AND PROCEDURE, and other specific topics

Criminal prosecutions, evidence in, see CRIMINAL LAW

Discovery of evidence, see PRETRIAL PROCEDURE, FEDERAL CIVIL PROCEDURE

Estoppel to assert, prove or deny facts, see ESTOPPEL

Fact questions, province of court and jury, see TRIAL and other specific topics

Instructions on evidence, see TRIAL and other specific topics

Particular forms of action or special proceedings and particular systems of jurisprudence, rules of evidence peculiar to, see ADMIRALTY, BANKRUPTCY, EQUITY, HABEAS CORPUS, MANDAMUS and other specific topics

Pleadings, admissibility of evidence as dependent on, and what constitutes variance and its effect, see PLEADING and other specific topics

Reception of evidence, practice in, see TRIAL, REFERENCE, FEDERAL CIVIL PROCEDURE

Relevancy and sufficiency of evidence of particular matters, causes of action, etc., provided for by separate topics, see ADVERSE POSSESSION, CONTRACTS, NEGLIGENCE and other specific topics

Witnesses, including their competency, attendance, production of documents, examination and credibility, see WITNESSES

Written testimony, taking and use of, see AFFIDAVITS, PRETRIAL PROCEDURE

I. JUDICIAL NOTICE, ¶1–52.

II. PRESUMPTIONS, ¶53–89.

III. BURDEN OF PROOF, ¶90–98.

IV. ADMISSIBILITY IN GENERAL, ¶99–156.

(A) FACTS IN ISSUE AND RELEVANT TO ISSUES, ¶99–117.

(B) RES GESTAE; EXCITED UTTERANCES, ¶118–128.

(C) SIMILAR FACTS AND TRANSACTIONS, ¶129–142.

(D) MATERIALITY, ¶143–147.

(E) COMPETENCY, ¶148–156.

V. BEST AND SECONDARY EVIDENCE, ¶157–187.

VI. DEMONSTRATIVE EVIDENCE, ¶188–198.

VII. ADMISSIONS, ¶200–265.

(A) NATURE, FORM, AND INCIDENTS IN GENERAL, ¶200–220.

(B) BY PARTIES OR OTHERS INTERESTED IN EVENT, ¶221–228.

(C) BY GRANTORS, FORMER OWNERS, OR PRIVIES, ¶229–236.

(D) BY AGENTS OR OTHER REPRESENTATIVES, ¶237–253.

(E) PROOF AND EFFECT, ¶254–265.

VIII. DECLARATIONS, ¶266–313.

(A) NATURE, FORM, AND INCIDENTS IN GENERAL, ¶266–275.5.

(B) BY DECEDENTS AGAINST INTEREST, ¶276–284.

(C) AS TO PEDIGREE, BIRTH, AND RELATIONSHIP, ¶285–297.

(D) AS TO MATTERS OF PUBLIC OR GENERAL RIGHT OR INTEREST, ¶298–308.

(E) PROOF AND EFFECT, ¶309–313.

IX. HEARSAY, ¶314–324.

X. DOCUMENTARY EVIDENCE, ¶325–383.

(A) PUBLIC OR OFFICIAL ACTS, PROCEEDINGS, RECORDS, AND CERTIFICATES, ¶325–337.

(B) EXEMPLIFICATIONS, TRANSCRIPTS, AND CERTIFIED COPIES, ¶338–349.

(C) PRIVATE WRITINGS AND PUBLICATIONS, ¶350–365.

(D) PRODUCTION, AUTHENTICATION, AND EFFECT, ¶366–383.

**157. EVIDENCE****XI. PAROL OR EXTRINSIC EVIDENCE AFFECTING WRITINGS,**  
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- (A) CONTRADICTING, VARYING, OR ADDING TO TERMS OF WRITTEN INSTRUMENT, ⌋384–427.
- (B) INVALIDATING WRITTEN INSTRUMENT, ⌋428–437.
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- (D) CONSTRUCTION OR APPLICATION OF LANGUAGE OF WRITTEN INSTRUMENT, ⌋448–463.
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- (A) CONCLUSIONS AND OPINIONS OF WITNESSES IN GENERAL, ⌋470–503.
- (B) SUBJECTS OF EXPERT TESTIMONY, ⌋505–534.
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- (F) EFFECT OF OPINION EVIDENCE, ⌋568–574.

**XIII. EVIDENCE AT FORMER TRIAL OR IN OTHER PROCEEDING,**  
⌋575–583.**XIV. WEIGHT AND SUFFICIENCY,**  
⌋584–601.**I. JUDICIAL NOTICE.**

- 1. Nature and scope in general.
- 2. Grounds.
- 3. — In general.
- 4. — Universal recognition or notoriety.
- 5. Matters of common knowledge in general.
  - (1). In general.
  - (2). Particular facts.
- 6. Course and laws of nature.
- 7. Qualities and properties of matter.
- 8. Operation and effect of natural forces.
- 9. Scientific facts and principles.
- 10. Geographical facts.
  - (1). In general.
  - (2). Location of cities, towns, and villages.
  - (3). Location of streets, blocks, and lots, and street numbers.

**I. JUDICIAL NOTICE.**(Cont'd)

- (4). Location and boundaries of states, counties, and townships.
- (5). Lakes, streams, and mountains, and navigability of waters.
- (6). Distances between places.
- 11. Historical facts.
- 12. Statistical facts.
- 13. Phenomena of animal and vegetable life.
- 14. Facts relating to human life, health, habits, and acts.
- 15. Personal status and conditions.
- 16. Language, words and phrases, and abbreviations.
- 17. Time, days, and dates.
- 18. Weights, measures, and values.
- 19. Matters of art and skill.
- 20. Management and conduct of occupations.
  - (1). In general.
  - (2). Banks, carriers, telegraphs, and telephones.
- 21. Customs and usages.
- 22. Corporations and associations and members thereof.
  - (1). In general.
  - (2). Powers and acts thereof.
  - (3). Location of railroads.
- 23. Matters relating to government and its administration in general.
  - (1). In general.
  - (2). Public surveys.
- 24. Nature and constitution of government.
- 25. Political divisions and bodies.
  - (.5). In general.
  - (1). Counties and county seats.
  - (2). Cities, towns, villages, and school districts.
  - (3). Township organization.
  - (4). District of Columbia.
- 26. Foreign governments.
- 27. Laws of the state.
- 28. — In general.
- 29. — Public statutes.
- 30. — Private statutes.
- 31. — Charters of public and private corporations.
- 32. — Municipal and county ordinances.
- 33. — Legislative proceedings and journals.

**157. EVIDENCE****I. JUDICIAL NOTICE.**(Cont'd)

- 34. Laws of United States.
- 35. Laws of other states.
- 36. Laws and customs of Indians.
- 37. Laws of foreign countries.
- 38. International law.
- 39. Treaties.
- 40. Jurisdiction and powers of courts.
- 41. Existence, organization, and terms of courts.
- 42. Rules and procedure of courts.
- 43. Judicial proceedings and records.
  - (1). In general.
  - (2). Records or decisions in same case.
  - (3). Records and decisions in other actions or proceedings.
  - (4). Proceedings in other courts.
- 44. Officers and official position and authority.
- 45. Elections and appointments to office.
- 46. Official proclamations and orders.
- 47. Administrative rules and regulations.
- 48. Official proceedings and acts.
- 49. Official signatures and seals.
- 50. Public institutions.
- 51. Mode of ascertaining facts required to be noticed; motions and notice of reliance.
- 52. Effect of judicial notice.

**II. PRESUMPTIONS.**

- 53. Nature and scope in general.
- 54. Grounds.
- 55. Identity of persons and things.
- 56. Personal status and condition in general.
- 57. Nature and condition of property or other subject-matter.
- 58. Health and physical condition.
- 59. Love of life and avoidance of danger.
- 60. Innocence; legality.
- 61. Character.
- 62. Mental capacity in general.
- 63. Sanity.
- 64. Intent.
- 65. Knowledge of law.
- 66. Knowledge of fact.
- 67. Continuance of fact or condition.
  - (1). In general.
  - (2). Sanity or insanity.

**II. PRESUMPTIONS.**(Cont'd)

- (3). Existence of fact or condition prior to time shown.
- (4). Continuance of law shown to exist.
- 68. Consequences of acts or states of fact.
- 69. Regularity of course of business or conduct of affairs.
- 70. Making, validity, and genuineness of writings.
- 71. Mailing, and delivery of mail matter.
- 72. Sending and delivery of e-mail, telegrams, and other messages.
- 73. Corporate acts and records.
- 74. Evidence withheld or falsified.
- 75. — In general.
- 76. — Failure of party to testify or giving evasive answers.
- 77. — Failure to call witness.
  - (1). In general.
  - (2). Effort made to procure witness not present.
  - (3). Witnesses equally within reach of the parties in general.
  - (4). Witnesses related to party failing to call them.
  - (5). Witnesses presently or formerly employed by parties failing to call them.
  - (6). Attorneys or physicians as witnesses.
- 78. — Suppression or spoliation of evidence.
- 79. — Fabrication of evidence.
- 80. Laws of other states.
  - (1). In general.
  - (2). Common law.
- 82. Judicial proceedings.
- 83. Official proceedings and acts.
  - (1). In general.
  - (2). Of municipalities and officers in general.
  - (3). Of officers in land department of state or federal government.
  - (4). Of counties and officers thereof in general.
  - (5). Of notaries.
  - (6). Of clerks of courts.
  - (7). Of sheriffs and constables.
- 84. Particular facts.

**157. EVIDENCE****II. PRESUMPTIONS.(Cont'd)**

- 85. Operation and effect.
- 85.1. — In general.
- 86. — Presumptions of law.
- 87. — Presumptions of fact.
- 88. Conflicting presumptions of fact.
- 89. Rebuttal of presumptions of fact.

**III. BURDEN OF PROOF.**

- 90. Nature and scope in general.
- 91. Party asserting or denying existence of facts.
- 92. Proof of negative.
- 93. Facts within knowledge of adverse party.
- 94. Extent of burden in general.
- 95. Elements of cause of action or claim.
- 96. Matters of defense and rebuttal.
  - (1). In general.
  - (2). Matters of set-off, counterclaim, or reconvention.
- 97. Particular facts or issues.
- 98. Failure to sustain burden.

**IV. ADMISSIBILITY IN GENERAL.****(A) FACTS IN ISSUE AND RELEVANT TO ISSUES.**

- 99. Relevancy in general.
- 100. Circumstantial evidence of facts in issue.
- 101. What law governs.
- 102. Identity of persons and things.
- 103. Personal status and condition.
- 104. Personal relations.
- 105. Nature and condition of property or other subject-matter.
- 106. Character or reputation.
  - (1). In general.
  - (2). Honesty and integrity.
  - (3). Temper.
  - (4). Chastity and temperance.
  - (5). Right to prove specific facts.
- 107. Pecuniary condition.
- 108. Motive and intent.
- 109. Knowledge.
- 110. Statements and conduct of parties.
- 111. Customs and course of business.
- 112. Value of services.
- 113. Value or market price of property.
  - (1). In general.
  - (2). Time and place of valuation.

**IV. ADMISSIBILITY IN GENERAL.(Cont'd)**

- (3). Appraisal of property.
- (4). Corporate stock and bonds.
- (5). Comparison with other property and other interests in same property.
- (6). Value of lease.
- (7). Growing crops and grain.
- (8). Cost of property and amount received in general.
- (9). Cost of production.
- (10). Cost of repairing, improving, or replacing property.
- (11). Value of rents and profits as showing value of property.
- (12). Decrease in rents and profits as showing damage to property.
- (13). Insurance.
- (14). Auction or judicial sale.
- (15). Amount for which property can be purchased.
- (16). Amount for which property will sell; offers.
- (17). Amount offered for a portion of property.
- (18). Amount offered for use of property.
- (19). Tax assessment.
- (20). Exchange value.
- (21). Circumstances adding to or detracting from value in general.
- (22). Animals.
- 114. Facts relevant to particular issues.
- 115. Matters showing relevancy of other facts.
- 116. Matters explanatory of facts in evidence or of inferences therefrom.
- 117. Evidence irrelevant unless preceded or followed by other evidence.
- (B) RES GESTAE; EXCITED UTTERANCES.**
- 118. Nature of doctrine in general; determination of question of admissibility.
- 119. Facts forming part of same transaction.
  - (1). In general.
  - (2). Negotiations resulting in oral contract.
  - (3). Writings evidencing or forming part of transaction.
- 120. Acts and statements accompanying or connected with transaction or event.

**157. EVIDENCE****IV. ADMISSIBILITY IN GENERAL.(Cont'd)**

- 121. — In general.
  - (1). In general.
  - (2). By agents or employees.
  - (3). Writings.
  - (4). Motive and intent in general.
  - (5). Residence or domicile.
  - (6). Ownership or possession of property.
  - (7). Execution of contract in general.
  - (8). Existence or nature of contract and relation of parties.
  - (9). Sale or conveyance.
  - (10). Tender, payment, or delivery of money or property.
  - (11). Torts in general.
  - (12). Personal injuries.
  - (13). Injury to or loss of property.
  - (14). Assault.
  - (15). False imprisonment and malicious prosecution.
  - (16). Alienation of affections.
  - (17). Fraud.
- 122. — Before transaction or event.
  - (1). In general.
  - (2). Acts or statements of agents or employees in general.
  - (3). Motive or intent in general.
  - (4). Residence or domicile.
  - (6). Personal injuries.
  - (7). Fraud.
  - (8). Statements made during negotiations leading to execution of contract.
- 123. — After transaction or event.
  - (1). In general.
  - (2). Writings.
  - (3). Acts or statements by agents or employees, in general.
  - (4). Motive and intent in general.
  - (5). Fraud.
  - (6). Grounds of separation or divorce.
  - (7). Existence, nature, or validity of contract or transfer of property.
  - (8). Torts in general.
  - (9). Assault.
  - (10). Personal injuries in general.
  - (11). Acts and statements of agents or employees in relation thereto.

**IV. ADMISSIBILITY IN GENERAL.(Cont'd)**

- (12). Injuries to or loss of property.
  - 124. Acts and statements of person sick or injured.
  - 125. — In general.
  - 126. — Statements as to cause of injury.
    - (.5). In general.
    - (1). At or near time or place of injury.
    - (2). Not contemporaneous with occurrence.
    - (3). Statements at another place.
    - (4). Response to inquiries.
    - (5). Dying declarations.
  - 127. — Statements as to and expressions of personal injury or suffering.
    - (1). In general.
    - (2). At or near time or place of injury.
    - (3). Not contemporaneous with occurrence of injury.
    - (4). Exclamations and expressions indicating pain or mental suffering.
    - (5). Past sufferings or condition.
  - 128. — Statements made for purpose of medical diagnosis or treatment.
- (C) SIMILAR FACTS AND TRANSACTIONS.**
- 129. Relation to issues in general.
    - (1). In general.
    - (2). Difference in time.
    - (3). Associated or explanatory transactions.
    - (4). Representations.
    - (5). Similar wrongful acts.
    - (6). Similar transactions.
  - 130. Exclusion as res inter alios acta.
  - 131. Similarity of conditions.
  - 132. Showing physical or mental condition.
  - 133. Showing intent or malice or motive.
  - 134. — In general.
  - 135. — Fraud.
    - (1). In general.
    - (2). Misrepresentations.
    - (3). Fraudulent conveyances.
  - 136. — Malice.
  - 137. Showing knowledge.
  - 138. Part of series showing system or habit.
  - 139. Showing custom or course of business.
  - 140. Showing methods of preventing injury.

**157. EVIDENCE**

*Excludes evidence of subsequent remedial measures; see EVIDENCE §219.10.*

141. Other injuries or accidents from same or similar causes.
142. Showing value.
  - (.5). In general.
  - (1). Sales of other property in general.
  - (2). Difference in location of other property.
  - (3). Difference in time of sale.
  - (4). Value of other property.
  - (5). Services.

**(D) MATERIALITY.**

143. Importance in general.
144. Certainty.
145. Remoteness.
146. Tendency to mislead or confuse.
147. Negative evidence.

**(E) COMPETENCY.**

148. Nature and source of evidence in general.
150. Results of experiments.
151. Testimony as to intent, motive, or condition of mind.
  - (1). In general.
  - (2). Execution and delivery of contracts and conveyances.
  - (3). Wrongful acts in general.
  - (4). Negligence and contributory negligence.
  - (5). Libel and slander.
  - (6). Usury.
  - (7). Good faith in general.
  - (8). Fraud and misrepresentation.
152. Testimony as to character or reputation.
153. Excuse for failure to testify, to call witness, or to produce evidence.
154. Evidence wrongfully obtained.
155. Evidence admissible by reason of admission of similar evidence of adverse party.
  - (1). In general.
  - (2). Character or reputation.
  - (3). Value.
  - (4). Title, ownership, or possession of property.
  - (5). Admission of similar evidence when first evidence was inadmissible.

**IV. ADMISSIBILITY IN GENERAL.(Cont'd)**

- (6). Opinion evidence.
- (7). Fraud or other wrongdoing.
- (8). Documentary evidence.
- (9). Care, skill, competency, or mental condition.
- (10). Declarations or conversations as rebuttal.
- (11). Damage or injuries.
156. Evidence inadmissible by reason of exclusion of similar evidence of adverse party.

**V. BEST AND SECONDARY EVIDENCE.**

157. Necessity and admissibility of best evidence.
  - (.5). In general.
  - (1). Existence of better evidence as ground of exclusion.
  - (2). Admissibility of best evidence.
  - (3). Existence of better evidence.
  - (4). Degrees of oral evidence.
  - (5). Matters not required to be in writing or recorded.
  - (6). Matters required to be in writing or recorded.
  - (7). Matters made best evidence by statute.
  - (8). Exclusion of documentary evidence as inferior to oral evidence.
158. Facts or transactions described in or evidenced by writing.
  - (1). In general.
  - (2). Payment or release.
  - (3). Ownership, possession, or control.
  - (4). Authority, appointment, or commission.
  - (5). Judicial acts, proceedings, and records in general.
  - (6). Recovery, entry, or enforcement of judgment.
  - (7). In criminal cases.
  - (8). Orders of court.
  - (9). Attachment, garnishment, or execution.
  - (10). Judicial sales.
  - (11). Administration or distribution of estates.
  - (12). Insolvency or bankruptcy.

**157. EVIDENCE****V. BEST AND SECONDARY  
EVIDENCE.(Cont'd)**

- (13). Pleadings, process and evidence.
- (14). Appeal.
- (15). Official acts, proceedings, and records in general.
- (16). Assessment, levy, and collection of taxes.
- (17). Acts of municipal boards.
- (18). Existence of public ways.
- (19). Official character, election, appointment, or resignation.
- (20). Executive acts.
- (21). Licenses.
- (22). Record of land office.
- (23). Official bonds.
- (24). Enlistment in military service.
- (25). Administration of oath.
- (26). Corporate acts, proceedings, and records.
- (27). Conveyances, contracts, and other instruments.
- (28). Books of account, private memoranda, and correspondence.
- (29). Notices.
- 159. Fact of making or existence of writing.
- 160. Contents of writings.
- 161. — In general.
- 161.1. — Necessity of producing document if accessible.
- 161.2. — Statutes and laws.
- 161.3. — Newspapers.
- 161.4. — Plats, maps and surveys.
- 162. — Judicial acts, proceedings, and records.
- (1). In general.
- (2). Judgment or decree.
- (3). Pleadings or evidence.
- (4). Orders of court or judicial writs.
- (5). Judicial sales.
- 163. — Official acts, proceedings, and records.
- 164. — Corporate acts, proceedings, and records.
- 165. — Conveyances, contracts, and other instruments.
- (1). In general.
- (2). Contracts of partnership or lease.
- (3). Sealed instruments.
- (4). Wills.

**V. BEST AND SECONDARY  
EVIDENCE.(Cont'd)**

- (5). Negotiable instruments.
- 166. — Books of account.
- 167. — Private memoranda and statements.
- 168. — Letters, telegrams, and other correspondence.
- 169. — Notices.
- 170. — Inscriptions, labels, names, and marks.
- 171. Writings collateral to issues.
- 172. Admissions as to contents of writings.
- 173. Original writing as best evidence.
- 174. — In general.
- 174.1. — Copies in general.
- 174.2. — Books of account.
- 174.3. — Conveyances, leases and other sealed instruments.
- 174.4. — Notices, letters and telegrams.
- 174.5. — Contracts.
- 175. — Public records or documents.
- 176. Grounds for admission of secondary evidence.
- 177. — In general.
- 178. — Destruction or loss of primary evidence.
- (.5). In general.
- (1). By party offering secondary evidence.
- (1.5). By adverse party.
- (2). Writings in general.
- (3). Records.
- (4). Sealed instruments.
- (5). Judicial papers.
- (6). Letters and telegrams.
- (7). Appointments.
- (8). Orders, warrants, and negotiable instruments.
- (9). Contracts, assignments, and bills of sale.
- (10). Laws and ordinances.
- (11). Books of account and receipts.
- (12). Wills.
- (13). Notices and publications.
- (14). Pictures and photographs.
- 179. — Possession or control of primary evidence.
- (1). In general.
- (2). Possession by adverse party.



**157. EVIDENCE****V. BEST AND SECONDARY EVIDENCE.**(Cont'd)

- (3). Possession by third persons.
- (4). Presumptions as to possession.
- 180. Preliminaries to admission of secondary evidence.
- 181. — In general.
- 182. — Proof as to existence of primary evidence.
- 183. — Proof as to destruction or loss of and search for primary evidence.
  - (.5). In general.
  - (1). Necessity and method of proof.
  - (1.5). Presumptions and burden of proof.
  - (2). Admissibility of evidence.
  - (3). Weight and sufficiency in general.
  - (4). Records.
  - (5). Plats.
  - (6). Negotiable instruments and receipts.
  - (7). Judicial papers.
  - (8). Books of account.
  - (9). Bills of sale.
  - (10). Leases and grants.
  - (11). Mortgages and trust deeds.
  - (12). Bonds.
  - (13). Contracts and assignments.
  - (14). Letters and telegrams.
  - (15). Conveyances.
- 184. — Proof as to possession or control of primary evidence.
- 185. — Notice to produce primary evidence.
  - (.5). In general.
  - (1). Necessity and sufficiency in general.
  - (2). Notice to produce lost instruments.
  - (3). Description or identification of primary evidence.
  - (4). Time of service.
  - (4.5). Sufficiency of service in general.
  - (5). Notice embodied in pleadings.
  - (6). Notice to absent parties or where document is out of jurisdiction.
  - (7). Filing of suit as notice.
  - (8). Service on counsel or representative.

**V. BEST AND SECONDARY EVIDENCE.**(Cont'd)

- (9). Notice to person not in possession of document.
- (10). Verbal notice.
- (11). Notice excused by misconduct of adverse party.
- (12). Proof of service.
- 186. Character and degrees of secondary evidence.
  - (1). In general.
  - (2). Oral evidence.
  - (3). Exclusion of parol evidence as inferior to copies or other documents.
  - (4). Subscribing witnesses.
  - (5). Memoranda and other documents.
  - (6). Copies and counterparts.
  - (7). Sufficiency.
  - (8). Acts and declarations.
  - (9). Records and abstracts.
- 187. Determination of question of admissibility.

**VI. DEMONSTRATIVE EVIDENCE.**

- 188. Exhibition of person or object in general.
- 189. Identity.
- 191. Race, color, sex, and age.
- 192. Wounds and other injuries.
- 193. Weapons, missiles, and other instruments.
- 194. Articles subject of or connected with controversy.
- 195. Duplicates, models, and casts.
- 196. Writings submitted for comparison.
- 197. — In general.
- 198. — Reproduction and enlargement.

**VII. ADMISSIONS.****(A) NATURE, FORM, AND INCIDENTS IN GENERAL.**

- 200. Nature and grounds for admission in general.
- 201. Subject-matter.
- 202. Interest of party and relation of admission thereto.
- 203. Capacity of person making admission, and voluntary character thereof.
- 204. Persons to whom made.

## 157. EVIDENCE

## VII. ADMISSIONS.(Cont'd)

- 205. Mode of making and form in general.
  - (1). In general.
  - (2). Admissions through interpreters.
  - (3). Conversation through telephone.
  - (4). Admissions as to indebtedness and amount thereof.
  - (5). Omission of matters from writing.
- 206. Judicial admissions.
- 207. — In general.
  - (1). In general.
  - (2). By counsel.
  - (3). Proceedings before arbitrators.
  - (4). Confession or plea of guilty in criminal prosecution.
  - (5). Offer of judgment or judgment by default.
- 208. — Pleadings.
  - (.5). In general.
  - (1). Admissibility in same proceedings.
  - (2). Admissibility in subsequent proceedings in general.
  - (3). Same or different parties.
  - (4). Pleadings not verified or signed.
  - (5). Pleadings not filed.
  - (6). Pleadings superseded, withdrawn, or abandoned.
  - (7). Allegations or defenses stricken out or overruled.
  - (8). Pleadings in suit dismissed.
  - (9). Admissibility of pleadings in justice court on appeal therefrom.
- 209. — Stipulations and agreed statements.
- 210. — Petitions, affidavits, and depositions.
- 211. — Testimony.
- 212. Offers of compromise or settlement.
- 213. — In general.
  - (1). In general.
  - (2). What constitutes offer.
  - (3). Persons by or to whom made.
  - (4). Admission of distinct or independent facts.
  - (5). Offer or consent to arbitrate.
- 214. — Admissions made without prejudice.
- 215. Statements in writing.
  - (1). In general.

## VII. ADMISSIONS.(Cont'd)

- (2). Writings not executed or not delivered.
- (3). Letters.
- (4). Newspaper articles.
- (5). Valuation of property for taxation.
- 216. Oral statements.
- 217. — In general.
- 218. — Relating to matters of record or in writing.
- 219. Acts or conduct.
  - (1). In general.
  - (2). Suppressing testimony.
  - (3). Compromise or settlement.
- 219.10. Subsequent remedial measures.
- 219.15. — In general.
- 219.20. — What are subsequent remedial measures.
  - (1). In general.
  - (2). Reports and analyses.
  - (3). Time relative to manufacture, sale or event.
- 219.25. — Establishing negligence or culpable conduct.
  - (1). In general.
  - (2). Purpose of exclusion.
  - (3). Change of design or product.
- 219.30. — Strict liability cases.
- 219.35. — Establishing facts other than culpable conduct.
 

*Excludes use for impeachment; see WITNESSES §406.*
- 219.40. — Existence of defect.
- 219.45. — Existence of duty.
- 219.50. — Ownership or control.
- 219.55. — Feasibility of precautions.
  - (1). In general.
  - (2). Change of design or product.
- 219.60. — Condition of premises or articles.
- 219.65. — Warnings, instructions or recall notices.
- 219.70. — Measures compelled by superior authority.
- 219.75. — Measures taken by third parties.
  - (1). In general.
  - (2). Employers of parties.
- 220. Acquiescence or silence.
  - (1). In general.

**157. EVIDENCE****VII. ADMISSIONS.(Cont'd)**

- (2). Failure to deny or object to oral statements in general.
- (3). Necessity that oral statement be heard and understood.
- (4). Oral statements by husband or wife.
- (5). Oral statements made in court.
- (6). Failure to deny or object to written statements in general.
- (7). Failure to dispute book entries or accounts.
- (8). Failure to answer letter or statements therein.

**(B) BY PARTIES OR OTHERS INTERESTED IN EVENT.**

- 221. Parties of record.
- 222. — In general.
  - (1). In general.
  - (2). Statements as to particular facts in general.
  - (3). Disparagement of title or interest.
  - (4). Statements as to intent, motive, or nature of act.
  - (5). Statements showing knowledge.
  - (6). Statements as to existence, validity, and amount of debt, or payment thereof.
  - (7). By parties to contest of will.
  - (8). Time of making admission in general.
  - (9). Parties having no interest in subject-matter at time of admission.
  - (10). Coparties.
- 223. — Nominal and unnecessary parties.
- 224. Real party in interest.
- 225. Interest in suit of persons not parties.
- 226. Joint interest.
  - (1). In general.
  - (2). Co-obligors.
  - (3). Coexecutors or coadministrators.
  - (4). Coheirs and devisees or legatees.
- 227. Persons suing or defending in different character or capacity.
- 228. Persons interested in subject-matter without interest in suit.

**(C) BY GRANTORS, FORMER OWNERS, OR PRIVIES.**

- 229. Privies and former owners in general.
- 230. Grantors, vendors, or mortgagors of real property.
  - (1). In general.
  - (2). Before conveyance or transfer of possession.
  - (3). After conveyance or transfer of title in general.
  - (4). Showing nature of conveyance.
  - (5). Showing fraud.
  - (6). After conveyance, but before transfer of possession.
- 231. Sellers or mortgagors of chattels.
  - (1). In general.
  - (2). Before transfer or delivery of possession.
  - (3). After transfer or delivery of possession.
  - (4). After parting with title, but before change of possession.
- 232. Bankrupts and assignors for benefit of creditors.
- 233. Donors.
- 234. Assignors of rights in action in general.
- 235. Former holders of bills or notes.
- 236. Testators and intestates.
  - (1). In general.
  - (2). Admission of indebtedness.
  - (3). Disparagement of title in general.
  - (4). Statements by persons in possession.
  - (5). Statements showing transfer of property.
  - (6). Admissibility against widow.

**(D) BY AGENTS OR OTHER REPRESENTATIVES.**

- 237. Authority in general.
- 238. Authority at time of admission.
- 239. Interest of party or representative.
- 240. Agents or employees.
- 241. — In general.
  - (1). In general.
  - (2). Statements by agents since deceased.
  - (3). Statements by subagent or special agent.
- 242. — Scope and extent of agency or employment.

**157. EVIDENCE****VII. ADMISSIONS.(Cont'd)**

- (1). In general.
- (2). Agents with special or limited authority.
- (3). Architects and building contractors.
- (4). Brokers.
- (5). Employees.
- (6). Interpreters.
- (7). Persons in possession of property.
- (8). Statements expressly authorized.
- (9). Report of agent to principal.
- (10). Statement of opinion.
- 243. — Admissions before or after transaction or event.
  - (.5). In general.
  - (1). Before transaction or event.
  - (2). After transaction or event in general.
  - (3). To show existence or terms of contract.
  - (4). To show negligence or cause of injury to person or property.
  - (5). Statement by captain or master of boat.
  - (6). Testimony at former trial.
  - (7). Termination of agency or employment.
- 244. Corporate officers or agents.
  - (1). In general.
  - (2). Scope and extent of agency or employment in general.
  - (3). Statements by receivers.
  - (4). Statements by officers of banks.
  - (5). Statements by officers of insurance companies.
  - (6). Statements by officers of carriers.
  - (7). Statements by agents and employees in general.
  - (8). Statements by agents and employees of insurance companies.
  - (9). Statements by agents and employees of carriers.
  - (10). Statements made before transaction or event.
  - (11). Statements made after transaction or event in general.
  - (12). Statements by officers or agents of banks.

**VII. ADMISSIONS.(Cont'd)**

- (13). Statements by officers or agents of insurance companies.
- (14). Statements by officers, agents, or employees of carriers in general.
- (15). To establish liability of carrier for injury to persons.
- (16). To establish liability of carrier for loss of or injury to property.
- (17). Statements made after termination of agency.
- 245. Public officers or agents.
- 246. Attorneys.
- 247. Persons referred to for information.
- 248. Husband or wife.
  - (1). In general.
  - (2). Authority in particular instances.
  - (3). Actions for injuries to wife.
  - (4). Husband and wife jointly sued.
  - (5). Time of making statement in general.
  - (6). Statements made after transaction or event.
  - (7). Statements not made during coverture.
- 249. Partners and joint contractors.
  - (1). In general.
  - (2). Admissibility as against partner making admission.
  - (3). Statements made after dissolution.
  - (4). Statements by surviving partner.
- 250. Principal or surety.
- 251. Trustee or beneficiary.
  - (1). In general.
  - (2). Personal representatives.
- 252. Insured or beneficiary.
- 253. Conspirators and persons acting together.
  - (1). In general.
  - (2). Necessity that statement be made in pursuance of and during pendency of conspiracy.
  - (3). Fraudulent conveyances.
- (E) PROOF AND EFFECT.**
- 254. Laying foundation for impeachment of testimony of party.
- 255. Preliminary evidence.

**157. EVIDENCE****VII. ADMISSIONS.(Cont'd)**

- 256. — In general.
- 257. — Identity of title or interest.
- 258. — Existence and extent of agency or authority.
  - (1). In general.
  - (2). Weight and sufficiency.
- 259. — Existence of partnership.
- 260. — Existence of conspiracy or common purpose.
- 261. Determination of question of admissibility.
- 262. Mode and requisites of proof of admissions.
- 263. Explanation or limitation.
  - (1). In general.
  - (2). Right to show entire statement or conversation.
  - (3). Contrary statements made at a different time.
  - (4). Pleadings, affidavits, or depositions.
- 264. Construction.
- 265. Conclusiveness and effect.
  - (1). In general.
  - (2). As to particular facts in general.
  - (3). As to indebtedness.
  - (4). As to payment.
  - (5). As to title or possession.
  - (6). As to agency.
  - (7). Judicial admissions in general.
  - (8). Pleadings.
  - (9). Stipulations and affidavits.
  - (10). Testimony.
  - (11). Guilty or nolo contendere plea in criminal prosecution.
  - (12). Implied admissions.
  - (13). Admissions qualified, limited, or contradicted.
  - (14). Admissions made through ignorance or mistake.
  - (15). Admissions of law.
  - (16). Admissions introduced to impeach witness.
  - (17). Conclusiveness as against privies, codefendants, and persons represented by or jointly interested with declarant.
  - (18). Weight and credibility.

**VIII. DECLARATIONS.****(A) NATURE, FORM, AND INCIDENTS IN GENERAL.**

- 266. Nature and grounds for admission in general.
- 267. Making of statement fact in issue.
- 268. Statements showing physical or mental condition; state of mind.
- 269. Statements showing intent, motive, or nature of act.
  - (1). In general.
  - (2). Statements by persons since deceased.
  - (3). Statements by persons transferring property.
- 270. Difficulty of producing direct evidence.
- 271. Self-serving declarations in general.
  - (.5). In general.
  - (1). Statements by parties of record in general.
  - (2). Application of rule in general.
  - (3). Statements by partners, joint contractors, or codefendants.
  - (4). Statements by debtor as to payment.
  - (5). Statements to agents, employees, or attorneys.
  - (6). Statements as to intent, motive, or nature of act.
  - (7). Statements as to terms or meaning of contract.
  - (8). Statements as to residence or domicile.
  - (9). Statements as to title.
  - (10). Time of making statement in general.
  - (11). Statements after controversy or suit commenced.
  - (12). Statements by third persons in general.
  - (13). Statements by agents, employees, or attorneys.
  - (14). Statements by husband or wife.
  - (15). Statements by grantors, assignors or former owners.
  - (16). Statements by persons since deceased in general.
  - (17). Statements by persons since deceased as to title or possession.
  - (18). Written statements in general.
  - (19). Letters.

**157. EVIDENCE****VIII. DECLARATIONS.(Cont'd)**

- (20). Pleadings.
- (21). Affidavits.
- (22). Testimony.
- 272. Declarations against interest in general.
- 273. Declarations of person in possession or control as to title or possession.
  - (1). In general.
  - (2). Real property in general.
  - (3). Self-serving declarations relating to real property.
  - (4). Declarations against interest relating to real property.
  - (5). Personal property.
- 274. Declarations as to boundaries.
  - (1). In general.
  - (2). Self-serving declarations.
  - (3). Title or interest at time of declaration.
  - (4). Declarations by third persons in general.
  - (5). Declarations by adjoining owners.
  - (6). Declarations by former owners.
  - (7). Declarations by deceased persons in general.
  - (8). Interest of deceased declarant and means of knowledge.
  - (9). Deceased surveyors.
  - (10). Deceased declarant not on land at time of declaration.
  - (11). Deceased former owners.
- 275. Declaration in course of business or performance of duty.
- 275.5. Dying declarations.

**(B) BY DECEDENTS AGAINST INTEREST.**

- 276. Declarations against interest in general.
- 277. Disparagement of title.
- 278. Statements as to fact or nature of transfer or gift.
- 279. Knowledge as to subject-matter.
- 280. Motive in making declaration.
- 281. Time of making declaration.
- 282. Relation of declaration to controversy.
- 283. Mode and form of declaration.
- 284. Death of person making declaration.

**(C) AS TO PEDIGREE, BIRTH, AND RELATIONSHIP.**

- 285. Nature of questions of pedigree and matters relating thereto.

**VIII. DECLARATIONS.(Cont'd)**

- 286. Matters of pedigree facts in issue.
- 287. Family records.
- 288. General and family reputation.
- 289. Declarations by members of family.
- 290. — In general.
- 291. — By deceased members.
- 292. — Necessity that declarant be dead.
- 293. — Relationship to family.
- 294. — Knowledge as to subject-matter.
- 295. — Time of making declaration.
- 296. — Relation of declaration to controversy.
- 297. — Mode and form of declaration.

**(D) AS TO MATTERS OF PUBLIC OR GENERAL RIGHT OR INTEREST.**

- 298. Matters of public right or interest.
- 299. Matters of general right or interest.
- 300. Matters of private interest involved with public right or interest.
- 301. Public records.
- 302. General reputation.
- 303. Declarations as to specific facts.
- 304. — In general.
- 305. — Knowledge as to subject-matter.
- 306. — Time of making declaration.
- 307. — Relation of declaration to controversy.
- 308. — Mode and form of declaration.

**(E) PROOF AND EFFECT.**

- 309. Preliminary evidence.
- 310. Determination of question of admissibility.
- 311. Mode and requisites of proof of declarations.
- 312. Construction.
- 313. Conclusiveness and effect.

**IX. HEARSAY.**

- 314. Nature and admissibility.
  - (1). In general.
  - (2). Hearsay evidence of opinions.
  - (3). Evidence of death.
  - (4). Conversation through interpreter.
  - (5). Information acted on by witness.
- 315. Statements by persons other than parties or witnesses.
  - 315.1. — In general.

**157. EVIDENCE****IX. HEARSAY.(Cont'd)**

- 317. — Oral statements.
  - (1). In general.
  - (2). Statements in general.
  - (3). Bodily and mental condition.
  - (4). Writings, contracts, agreements, and transactions.
  - (5). Ownership and possession.
  - (6). Value and price.
  - (7). Indebtedness and payment.
  - (8). Cause.
  - (9). Due care and nature of act.
  - (10). Condition or sufficiency of things.
  - (11). Weight, amount, and quality.
  - (12). Representative character and relationship.
  - (13). Election acts.
  - (14). Identity.
  - (15). Intention.
  - (16). Residence.
  - (17). Statements of persons available as witnesses.
  - (18). Statements by persons since deceased.
- 318. — Writings.
  - (1). In general.
  - (2). Letters and telegrams.
  - (3). Records.
  - (4). Reports.
  - (5). Receipts.
  - (6). Books.
  - (7). Certificates and affidavits.
  - (8). Pleadings.
- 319. Evidence founded on hearsay.
- 320. — In general.
- 321. — Testimony of person as to his age.
- 322. — Reputation as to persons.
  - (1). In general.
  - (2). Character.
  - (3). Death.
  - (4). Condition of servitude.
  - (5). Mental condition.
  - (6). Pecuniary condition.
- 323. — Market value shown by sales, offers to purchase or sell, or market quotations.
  - (1). In general.
  - (2). Sales.

**IX. HEARSAY.(Cont'd)**

- (3). Offers to purchase or sell.
- (4). Market quotations.
- 324. — Repute as to facts.
  - (1). In general.
  - (2). Possession.
  - (3). Ownership.

**X. DOCUMENTARY EVIDENCE.****(A) PUBLIC OR OFFICIAL ACTS, PROCEEDINGS, RECORDS, AND CERTIFICATES.**

- 325. Public records, documents, and publications in general.
- 326. State papers.
- 327. Laws.
- 328. — In general.
- 329. — Private statutes.
- 330. — Ordinances.
- 331. — Foreign laws.
- 332. Judicial acts and records.
  - (1). In general.
  - (2). Matters included in record in general.
  - (3). Pleadings.
  - (4). Stenographers' notes.
  - (5). Writs and returns thereon.
  - (6). Records of justices of the peace.
  - (7). Records of probate courts.
  - (8). Minutes of proceedings.
- 333. Official records and reports.
  - (1). In general.
  - (2). Records of county officers in general.
  - (3). Entries by clerks of court.
  - (4). Tax records and receipts.
  - (5). Records, reports, and returns of surveyors.
  - (6). School records.
  - (7). Records kept by United States officers in general.
  - (8). Weather records.
  - (9). Records of boards of health.
  - (10). Private books and memoranda of officers.
  - (11). Unauthorized acts and records.
  - (12). Minutes and memoranda.
- 334. Official certificates.
  - (1). In general.
  - (2). Scope of official duty.

**157. EVIDENCE****X. DOCUMENTARY EVIDENCE.**(Cont'd)

- (3). Certificates of inspection.
  - (4). Certificates of death or cause thereof.
  - (5). Conformity with statute.
  - 335. Grants and patents for land, and proceedings in land office.
    - (1). In general.
    - (2). Surveys and maps.
    - (3). Certificates of officers.
    - (4). Official correspondence.
  - 336. Records of conveyances and other private writings.
    - (1). In general.
    - (2). Instruments improperly admitted to record.
    - (3). Form and validity of instrument.
  - 337. Municipal records.
- (B) EXEMPLIFICATIONS, TRANSCRIPTS, AND CERTIFIED COPIES.**
- 338. Necessity and admissibility in general.
  - 339. Statutory provisions.
  - 340. Judicial records and proceedings.
    - (1). In general.
    - (2). Of federal courts in state courts.
    - (3). Of probate courts.
    - (4). Of justices of the peace.
    - (5). Copy of transcript.
  - 341. Official documents, records, and proceedings in general.
  - 342. Records and proceedings in land office.
  - 343. Records of conveyances and other private writings.
    - (1). In general.
    - (2). Admissibility of abstract of title.
    - (3). Deeds and contracts of sale in general.
    - (4). Mortgages and assignments.
    - (5). Articles of incorporation.
    - (6). Effect of statutes requiring record.
    - (7). Instruments not required or authorized to be recorded.
    - (8). Execution and proof of original.
    - (10). Place of record.
  - 344. Municipal records.
  - 345. Requisites of exemplification or certificate.
    - (1). In general.

**X. DOCUMENTARY EVIDENCE.**(Cont'd)

- (2). Judicial acts, records, and proceedings.
  - 346. Acts, records, and judicial proceedings of other states.
  - 347. — In general.
  - 348. — Requisites of exemplification or certificate.
    - (1). In general.
    - (2). Judicial acts, records, and proceedings.
  - 349. Acts, records, and judicial proceedings of foreign countries.
- (C) PRIVATE WRITINGS AND PUBLICATIONS.**
- 350. Unofficial writings in general.
  - 351. Unofficial or business records in general.
  - 352. Corporate records and proceedings.
    - (1). In general.
    - (2). Constitution, by-laws, and rules.
    - (3). Parties against whom admissible.
    - (4). Names of subscribers and amount of subscription.
    - (5). Form and authenticity in general.
    - (6). Copies.
  - 353. Conveyances, contracts, and other instruments.
    - (1). In general.
    - (2). Relation to matters in controversy in general.
    - (3). Recitals of fact in general.
    - (4). Admissions in general.
    - (5). Consideration.
    - (6). Pedigree, relationship, birth, and death.
    - (7). Nature of instrument in general.
    - (8). Form and validity in general.
    - (9). Execution and proof.
    - (10). Delivery.
    - (11). Record.
    - (12). Void instruments.
    - (13). Instruments showing only part of transaction or agreement.
    - (14). Documents insufficient or incomplete when standing alone.
    - (15). Instruments executed in other state or country.
  - 354. Books of account.
    - (.5). In general.



**157. EVIDENCE****X. DOCUMENTARY EVIDENCE.(Cont'd)**

- (1). Books of particular persons in general.
- (2). Character of books in general.
- (3). Diaries and memoranda of accounts.
- (4). Day books.
- (5). Ledgers.
- (6). Passbooks.
- (7). Stubs of check and receipt books.
- (8). Time books.
- (9). Matters proper for book entries.
- (10). Form, regularity, and sufficiency of entries in general.
- (11). By whom entries are made.
- (12). Delay in making entries.
- (13). Entries made from memoranda or other information.
- (14). Extracts from account and transcribed entries.
- (15). Mutilated and shopworn books.
- (16). Completeness of account.
- (17). Purposes of proof in general.
- (18). Persons bound in general.
- (19). Evidence for party in general.
- (20). Amount of charge.
- (21). Persons charged in entry.
- (22). Entries by decedents in general.
- (22.5). Absence or insanity of person making entries.
- (23). Death of party charged.
- (24). Entries against interest in general.
- (25). Entries against interest by decedents.
- (26). Books of third persons.
355. Private memoranda and statements in general.
  - (1). In general.
  - (2). Statements of account.
  - (3). Items of property and value thereof; invoices.
  - (4). Memorandum of parol contract or conversation.
  - (5). Admissibility in connection with oral testimony.
  - (6). Past recollection recorded.
  - (7). Death or absence of person making memoranda or statement.
356. Statements prepared for use at trial.

**X. DOCUMENTARY EVIDENCE.(Cont'd)**

357. Letters, telegrams, and other correspondence.
358. Maps, plats, and diagrams.
359. Photographs and other pictures; sound records and pictures.
  - (.5). In general.
  - (1). Photographs in general.
  - (2). Physical appearance and identity of persons.
  - (3). Condition of premises.
  - (4). Roentgen or X-ray process.
  - (5). Sound records in general.
  - (6). Motion pictures.
360. Books and other printed publications.
361. — In general.
362. — Statutes, law reports, and legal text-books.
363. — Scientific and technical works; safety standards.
364. — Mortality tables and tables of expectancy of life.
365. — Annuity tables.
- (D) PRODUCTION, AUTHENTICATION, AND EFFECT.**
366. Public documents, records, exemplifications, or official copies.
  - (1). In general.
  - (2). Proof of genuineness in general.
  - (3). Judicial acts and records.
  - (4). Plats.
  - (5). Documents or records from other state or foreign country.
  - (6). Production of part of record or document in general.
  - (7). Part of judicial proceedings.
  - (8). Necessity of producing part showing jurisdiction.
  - (9). Part of probate record.
  - (10). Parol or extrinsic evidence to supply defects.
  - (11). Official deeds in general.
  - (12). Altered records.
367. Examined copies of records.
368. Compelling production by adverse party.
  - (1). In general.
  - (2). Nature of document and relation to issue.
  - (3). Application.
  - (4). Notice in general.

## 157. EVIDENCE

**X. DOCUMENTARY EVIDENCE.**(Cont'd)

- (5). Form and sufficiency of notice.
- (6). Subpoena duces tecum.
- (7). Time for application or notice.
- (8). Hearing and determination.
- (9). Effect of order or notice, and time for production.
- (10). Excuse for nonproduction.
- (11). Vacation of order.
- (12). Effect of failure to produce.
- (13). Effect of production in general.
- (14). Introduction by party producing document.
- 369. Preliminary evidence for authentication.
- 369.1. — In general.
- 370. — Necessity in general.
  - (1). In general.
  - (2). Denial of execution.
  - (3). Corporate acts, records, and proceedings.
  - (4). Conveyances, contracts, and other writings in general.
  - (5). Proof of authority to execute.
  - (6). Proof of recording.
  - (7). Unrecorded instruments.
  - (8). Record as dispensing with proof of execution.
  - (9). Documents produced on notice or order.
  - (10). Proof of execution of original to authorize introduction of copy.
  - (11). Instruments, and assignment, indorsement, or guaranty thereof.
  - (12). Proof of delivery.
- 371. — Writings collateral to issues.
- 372. — Ancient documents.
  - (1). In general.
  - (2). Necessity of authentication in general.
  - (3). Age of instrument.
  - (4). Sufficiency of authentication in general.
  - (5). Proof of possession under instrument.
  - (6). Custody of instrument.
  - (7). Document attacked as not genuine.
  - (8). Deeds of officers or other representatives.

**X. DOCUMENTARY EVIDENCE.**(Cont'd)

- (9). Ancient wills.
- (10). Public records.
- (11). Ancient maps, plans, and surveys.
- (12). Defects and irregularities in instrument.
- 373. — Form and sufficiency in general.
  - (1). In general.
  - (2). Corporate acts, records, and proceedings.
  - (3). Unwitnessed instruments and unauthorized attestation.
  - (4). Joint instruments.
  - (5). Admissions.
  - (6). Proof of copies offered as evidence.
- 374. — Attesting witnesses.
  - (1). In general.
  - (2). Instruments signed or attested by mark.
  - (3). Competency and identity of subscribing witness.
  - (4). Certainty and sufficiency of testimony.
  - (5). Evidence of only part of attesting witnesses.
  - (6). Necessity and admissibility of evidence.
  - (7). Grounds for secondary evidence.
  - (8). Preliminaries to admission of secondary evidence of execution.
  - (8.5). Character and sufficiency of secondary evidence.
  - (9). Genuineness of handwriting.
  - (10). Testimony of parties to instrument.
  - (11). Contradictory and rebutting testimony.
- 375. — Handwriting.
- 376. — Books of account.
  - (1). In general.
  - (2). Admissions by party charged.
  - (3). Testimony of party who has settled by books offered.
  - (4). Proof of handwriting in general.
  - (5). Testimony of party.
  - (6). Necessity of producing person who made entry.
  - (7). Absence of party making entries.
  - (8). Death of party making entry.

**157. EVIDENCE****X. DOCUMENTARY EVIDENCE.(Cont'd)**

- (9). Knowledge of witness in general.
- (10). Memory as to transaction.
- (11). Certainty of testimony.
- (12). Partnership books.
- (13). Reputation of books.
- 377. — Memoranda and statements.
- 378. — Letters, telegrams, e-mails, and other correspondence.
  - (1). In general.
  - (2). Letters received in reply.
  - (3). Proof of authority of person writing for alleged sender.
  - (4). Proof of handwriting.
  - (5). Authentication of telegrams in general.
  - (6). Reply telegrams.
- 379. — Maps, plats, and diagrams.
- 380. — Photographs and other pictures; sound records and pictures.
- 381. — Books and other printed publications.
- 382. Determination of question of admissibility.
- 383. Conclusiveness and effect.
  - (5). In general.
    - (1). Use by adverse party.
    - (2). Public documents and publications in general.
    - (3). Judicial and official acts, proceedings, records, reports, and statements.
    - (4). Official certificates.
    - (5). Foreign records.
    - (6). Corporate records.
    - (7). Private contracts and other writings.
    - (8). Books of account.
    - (9). Maps, plats, and diagrams.
    - (10). Photographs.
    - (11). Books and other printed publications.
    - (12). Effect of introducing part of document or record.

**XI. PAROL OR EXTRINSIC EVIDENCE AFFECTING WRITINGS.****(A) CONTRADICTING, VARYING, OR ADDING TO TERMS OF WRITTEN INSTRUMENT.**

- 384. Grounds for exclusion of extrinsic evidence.

**XI. PAROL OR EXTRINSIC EVIDENCE AFFECTING WRITINGS.(Cont'd)**

- 385. Writings excluding extrinsic evidence in general.
- 386. Judicial records and proceedings.
  - (1). In general.
  - (2). In probate court.
  - (3). In justice's court.
  - (4). Affecting jurisdiction.
  - (5). Orders of court.
  - (6). Damages included in judgment or award.
  - (7). Taking poor debtor's bond or recognizance.
- 387. Official records and documents.
  - (1). In general.
  - (2). Legislative journal or records.
  - (3). Proceedings of land office.
  - (4). Plats and surveys.
  - (5). County records or proceedings.
  - (6). Municipal records or proceedings.
  - (7). Town records or proceedings.
  - (8). School records or proceedings.
  - (9). Registration or certificate thereof.
  - (10). Levy, assessment, and collection of taxes.
- 388. Unofficial records.
- 389. Corporate records and proceedings.
- 390. Deeds.
  - (1). In general.
  - (2). Official deed.
  - (3). Description of premises.
  - (4). Estate or interest conveyed.
  - (5). Reservations or limitations.
  - (6). Affecting covenants of warranty.
  - (7). Time of taking effect.
- 391. Bills of sale.
- 392. Assignments.
- 393. Leases.
  - (1). In general.
  - (2). Description or identity of premises.
  - (3). Repairs or improvements.
  - (4). Duration or termination of lease.
- 394. Charter parties.
- 395. Mortgages.
  - (1). In general.
  - (2). Debt or obligation secured.
- 396. Pledges.

**157. EVIDENCE****XI. PAROL OR EXTRINSIC EVIDENCE  
AFFECTING WRITINGS.(Cont'd)**

- 397. Contracts in general.
  - (1). In general.
  - (2). Completeness of writing and presumption in relation thereto; integration.
  - (3). What constitutes contract excluding parol evidence in general.
  - (4). Subscription contracts.
  - (5). Contract for partnership or dissolution thereof.
  - (6). Compromise or settlement, and arbitration.
- 398. Contracts of employment.
- 399. Contracts for buildings and other works.
- 400. Contracts of sale or exchange.
  - (1). In general.
  - (2). Real property.
  - (3). Personal property in general.
  - (4). What constitutes contract for sale of chattels.
  - (5). Description and property included.
  - (6). Warranty.
  - (7). Time or place of delivery.
- 401. Bonds.
- 402. Bills and notes.
- 403. Indorsements and transfers of bills or notes.
- 404. Contracts of guaranty and suretyship.
- 405. Contracts of insurance.
  - (1). In general.
  - (2). Property or interest covered.
  - (3). Conditions.
  - (4). Reinsurance.
  - (5). Beneficiaries.
  - (6). Indorsement on policy.
- 406. Contracts for storage.
- 407. Contracts of carriage.
  - (1). In general.
  - (2). Bill of lading.
- 408. Receipts.
  - (1). In general.
  - (2). Receipt in full on compromise, settlement, or discharge.
  - (3). Writing containing matter other than receipt.
  - (4). What constitutes receipt in general.

**XI. PAROL OR EXTRINSIC EVIDENCE  
AFFECTING WRITINGS.(Cont'd)**

- (5). Receipt of premium on insurance.
- (6). Receipt for taxes.
- (7). Receipt for property in general.
- (8). Receipt for property levied on.
- (9). Receipt for property by carrier.
- (10). Bills of parcels.
- 409. Releases.
- 410. Memoranda not constituting contract or disposition of property.
- 411. Writing incomplete on its face.
- 412. Writing showing alteration.
- 413. Evidence extrinsic to writing in general.
- 414. Date of instrument.
- 415. Sustaining validity of instrument.
- 416. Connection of contemporaneous writings.
- 417. Matters not included in writing or for which it does not provide.
  - (1). In general.
  - (2). Judicial records and proceedings.
  - (3). Official records and proceedings.
  - (4). Corporate records and proceedings.
  - (5). Deeds.
  - (6). Bills of sale.
  - (7). Leases.
  - (8). Mortgages or security.
  - (9). Contracts in general.
  - (10). Contracts of employment.
  - (11). Contracts for buildings and other works.
  - (12). Contracts of sale.
  - (13). Bills and notes and indorsement thereof.
  - (14). Contracts of insurance.
  - (15). Contracts for storage.
  - (16). Contracts of carriage.
  - (17). Delivery and acceptance of instrument.
  - (18). Date of instrument.
  - (19). Duration of contract and time for performance.
- 418. Parties to instrument or obligation.
- 419. Nature of consideration.
  - (1). In general.
  - (2). Deeds in general.
  - (3). Additional consideration for deed.

**157. EVIDENCE****XI. PAROL OR EXTRINSIC EVIDENCE AFFECTING WRITINGS.(Cont'd)**

- (4). Assumption or payment of debts or incumbrances.
- (5). Acknowledgment of payment in deed.
- (6). Sustaining validity of deed.
- (7). Bills of sale.
- (8). Assignments.
- (9). Leases.
- (10). Mortgages.
- (11). Contracts in general.
- (12). Contracts for buildings and other works.
- (13). Contracts of sale.
- (14). Bonds.
- (15). Bills and notes.
- (16). Indorsements and transfers of bills and notes.
- (17). Contracts of guaranty and suretyship.
- (18). Contracts of insurance.
- (19). Contracts of carriage.
- (20). Releases.
- 420. Existence of condition or contingency.
  - (.5). In general.
  - (1). Deeds.
  - (1.5). Mortgages and assignments or releases thereof.
  - (2). Leases.
  - (3). Contracts in general.
  - (4). Subscriptions for corporate stock.
  - (5). Contracts of sale.
  - (6). Bonds.
  - (7). Bills and notes or indorsement thereof.
- 422. Existence or accrual of liability.
- 423. Nature and extent of liability.
  - (1). In general.
  - (2). Covenants in deeds.
  - (3). Leases.
  - (4). Mortgages.
  - (5). Bonds.
  - (6). Bills and notes and indorsement thereof.
  - (7). Contracts of guaranty.
  - (8). Principal or surety.
  - (9). Medium of payment.
- 424. Effect of writing as to persons not parties thereto or privies.

**XI. PAROL OR EXTRINSIC EVIDENCE AFFECTING WRITINGS.(Cont'd)**

- 425. Writings collateral to issues in general.
- 426. Existence of relation created by writing.
- 427. Evidence for purpose other than varying rights or liabilities dependent upon terms of writing.
- (B) INVALIDATING WRITTEN INSTRUMENT.**
- 428. Grounds for admission of extrinsic evidence.
- 429. Matters affecting validity in general.
- 430. Incapacity of parties.
- 431. Insufficiency or irregularity of execution or delivery.
- 432. Want or failure of consideration.
- 433. Mistake.
  - (1). In general.
  - (2). Judicial records and proceedings.
  - (3). Official records and proceedings.
  - (4). Deeds.
  - (5). Leases.
  - (6). Contracts in general.
  - (7). Contracts for buildings and other works.
  - (8). Contracts of sale.
  - (9). Bills and notes.
  - (10). Contracts of insurance.
  - (11). Receipts.
- 434. Fraud.
  - (1). In general.
  - (2). Judicial records and proceedings.
  - (3). In deeds.
  - (4). In bills of sale.
  - (5). In assignments.
  - (6). In leases.
  - (7). In mortgages.
  - (8). In contracts in general.
  - (9). In contracts of employment.
  - (10). In contracts for buildings and other works.
  - (11). In contracts of sale or exchange.
  - (12). In bills and notes or indorsement thereof.
  - (13). In contracts of insurance.
  - (14). In receipts.
  - (15). In releases.
- 435. Duress.

**157. EVIDENCE****XI. PAROL OR EXTRINSIC EVIDENCE  
AFFECTING WRITINGS.(Cont'd)**

436. Undue influence.  
437. Illegality.

**(C) SEPARATE OR SUBSEQUENT  
ORAL AGREEMENT.**

439. Grounds for admission of oral evidence.  
440. Prior and contemporaneous collateral agreements.  
441. — In general.  
    (1). In general.  
    (2). Judicial proceedings.  
    (3). Assignments.  
    (4). Leases.  
    (5). Mortgages or security.  
    (6). Contracts of employment.  
    (7). Contracts for buildings and other works.  
    (8). Sale or exchange of real property and deeds.  
    (9). Sale or exchange of personal property.  
    (10). Bonds.  
    (11). Bills and notes or indorsement thereof.  
    (12). Contracts of guaranty and suretyship.  
    (13). Contracts of insurance.  
    (14). Contracts of carriage.  
    (15). Receipts and releases.  
442. — Completeness of writing.  
    (1). In general.  
    (2). Bills of sale.  
    (3). Leases.  
    (4). Contracts of employment.  
    (5). Contracts for buildings and other works.  
    (6). Contracts of sale or exchange and deeds.  
    (7). Contracts of guaranty.  
    (8). Contracts of carriage.  
    (9). Releases.  
443. — Relation of oral agreement to writing.  
    (1). In general.  
    (2). Inducement to make writing.  
    (3). Distinct consideration.  
444. — Condition precedent to obligation under writing.

**XI. PAROL OR EXTRINSIC EVIDENCE  
AFFECTING WRITINGS.(Cont'd)**

- (.5). In general.  
    (1). Leases.  
    (2). Contracts in general.  
    (3). Contracts for buildings and other works.  
    (4). Contracts of sale and deeds.  
    (5). Bonds.  
    (6). Bills and notes or indorsement thereof.  
    (7). Contracts of guaranty and suretyship.  
    (8). Contracts of insurance.  
445. Subsequent agreements.  
    (1). In general.  
    (2). Sales.  
    (3). Leases.  
    (4). Bills and notes or indorsement thereof.  
    (5). Mortgage or security.  
    (6). Contracts of employment.  
    (7). Contracts for buildings or other works.  
    (8). Contracts of carriage.  
    (9). Extension of time for performance.  
  
**(D) CONSTRUCTION OR APPLICATION  
OF LANGUAGE OF WRITTEN  
INSTRUMENT.**  
448. Grounds for admission of extrinsic evidence.  
449. Nature of ambiguity or uncertainty in instrument.  
450. — In general.  
    (1). Writings in general.  
    (2). Judicial and official records and proceedings.  
    (3). Deeds.  
    (3.5). Mortgages.  
    (4). Leases.  
    (5). Contracts in general.  
    (6). Contracts of employment.  
    (7). Contracts for buildings and other works.  
    (8). Contracts of sale.  
    (9). Bonds.  
    (10). Bills and notes.  
    (11). Contracts of guaranty.

**157. EVIDENCE****XI. PAROL OR EXTRINSIC EVIDENCE  
AFFECTING WRITINGS.(Cont'd)**

- (12). Receipts and releases.
- 451. — Patent ambiguity.
- 452. — Latent ambiguity.
- 453. Writing illegible or unintelligible.
- 454. Meaning of words, phrases, signs, or abbreviations.
- 455. — In general.
- 456. — Peculiar sense of terms in common use.
- 457. — Technical, trade, or local terms.
- 458. Relation and application of language to facts in general.
- 459. Identification of parties.
  - (1). In general.
  - (2). Personal, official, or representative capacity.
  - (3). Individual or firm.
  - (4). Persons having same name.
  - (5). Mistake or variance in name.
- 460. Identification of subject-matter.
  - (1). In general.
  - (2). In conveyances, contracts, and writings in general.
  - (3). Of real property in general.
  - (4). Application of description to subject-matter.
  - (5). Property or interest included.
  - (6). Boundaries.
  - (7). Sufficiency of description to admit parol evidence.
  - (8). Location and identification of monuments or calls.
  - (9). Reference to other instruments.
  - (10). Of personal property in general.
  - (11). In sale of personal property.
  - (12). In chattel mortgage.
  - (13). Of debt or obligation collateral to security.
- 461. Showing intent of parties as to subject-matter.
  - (1). In general.
  - (2). In construction of deeds in general.
  - (3). In description of property.
  - (4). In extent or interest conveyed.
  - (5). In reservations or exceptions.
- 462. Showing purpose of writing.

**XI. PAROL OR EXTRINSIC EVIDENCE  
AFFECTING WRITINGS.(Cont'd)**

- 463. Showing mode of performance of obligation.
- (E) SHOWING DISCHARGE OR PERFORMANCE OF OBLIGATION.**
- 464. Grounds for admission of extrinsic evidence.
- 465. Agreement as to performance or enforcement.
- 466. Release or other discharge without performance.
- 467. Estoppel or waiver.
- 468. Performance.
- 469. Payment.

**XII. OPINION EVIDENCE.****(A) CONCLUSIONS AND OPINIONS  
OF WITNESSES IN GENERAL.**

- 470. Grounds for admission.
- 471. Conclusions and matters of opinion or facts.
  - (1). In general.
  - (2). Opinions and conclusions in general.
  - (3). Facts in general.
  - (4). Reasons given for other statements.
  - (5). Conversations in general.
  - (6). Conversations concerning contracts.
  - (7). Meaning of letters.
  - (8). Knowledge of other person.
  - (9). Motive and intent.
  - (10). Ability to see or hear.
  - (11). Knowledge of witness.
  - (12). Personal identity and characteristics.
  - (13). Bodily appearance or condition.
  - (14). Mental condition or capacity.
  - (15). Pecuniary condition.
  - (16). Handwriting.
  - (17). Due care and proper conduct.
  - (18). Customs and usages.
  - (19). Nature, condition, and relation of objects.
  - (20). Value.
  - (21). Quantity, space, or distance.
  - (22). Time.

**157. EVIDENCE****XII. OPINION EVIDENCE.(Cont'd)**

- (23). Rate of speed.
- (24). Cause and effect.
- (25). Performance or breach of contract.
- (26). Title and ownership.
- (27). Possession.
- (28). Contractual relation.
- (29). Construction and effect of contracts or instruments.
- (30). Agency in general.
- (31). Authority.
- (32). Partnership.
- (33). Abandonment.
- (34). Indebtedness.
- (35). Damages.
- 472. Matters directly in issue.
  - (1). In general.
  - (2). Damages.
  - (3). Performance or breach of contract.
  - (4). Due care and proper conduct.
  - (5). Sufficiency of appliances and machinery.
  - (6). Ownership.
  - (7). Motive and intent.
  - (8). Mental condition or capacity.
  - (9). Nature, condition, and relation of objects.
  - (10). Value.
  - (11). Cause and effect.
- 473. Inferences or impressions from collective facts.
- 474. Special knowledge as to subject-matter.
  - (1). In general.
  - (2). Personal identity and age.
  - (3). Bodily condition.
  - (4). Mental condition or capacity.
  - (5). Quantity or capacity.
  - (6). Due care and proper conduct in general.
  - (7). Operation of railroad and street railroad cars and other vehicles in general.
  - (8). Speed.
  - (9). Space or distance.
  - (10). Dangerous character of property or business.
  - (11). Cause and effect.

**XII. OPINION EVIDENCE.(Cont'd)**

- (12). Quality.
- (13). Pecuniary condition.
- (14). Handwriting.
- (15). Nature, condition, and relation of objects.
- (16). Value in general.
- (17). Value of services.
- (18). Value of real property.
- (19). Value of personal property.
- (20). Damages.
- 474.5. Subjects of opinion evidence in general.
- 475. Personal identity and characteristics.
- 476. Age.
- 477. Bodily appearance or condition.
  - (1). In general.
  - (2). Physical condition.
  - (3). Nature or extent of personal injuries.
  - (4). Pain.
  - (5). Condition of animal.
- 478. Mental condition or capacity.
  - (1). In general.
  - (2). Undue influence.
  - (3). Intoxication.
- 479. Pecuniary condition.
- 480. Handwriting.
- 481. Due care and proper conduct.
  - (1). In general.
  - (2). Due care of person injured.
  - (3). Operation of railroads.
  - (4). Fires.
- 482. Custom or usage.
- 483. Nature, condition, and relation of objects.
  - (1). In general.
  - (2). Land.
  - (3). Railroad track.
  - (4). Highway or turnpike.
  - (5). Bridge.
  - (6). Sidewalk.
  - (7). Weight.
- 484. Quantity.
- 485. Value.
- 486. — In general.
- 487. — Services.
- 488. — Real property.
- 489. — Personal property.



**157. EVIDENCE****XII. OPINION EVIDENCE.(Cont'd)**

- 490. Space or distance.
- 491. Time.
- 492. Rate of speed.
- 493. Cause and effect.
- 494. Damages.
- 495. — In general.
- 496. — Injuries to the person.
- 497. — Injuries to property.
- 498. — Breach of contract.
- 498.5. Determination of question of competency.
- 499. Examination of witnesses.
- 499.1. — In general.
- 500. — Testimony in general.
- 501. — Facts forming basis of opinion.
  - (1). In general.
  - (2). Bodily condition.
  - (3). Mental condition or capacity.
  - (4). Pecuniary condition.
  - (5). Due care and proper conduct.
  - (6). Condition of objects.
  - (7). Value.
  - (8). Time.
  - (9). Cause and effect.
  - (10). Damages.
- 502. — Cross-examination and re-examination.
- 503. Corroboration.

**(B) SUBJECTS OF EXPERT TESTIMONY.**

- 505. Matters of opinion or facts.
- 506. Matters directly in issue.
- 507. Matters of common knowledge or observation.
- 508. Matters involving scientific or other special knowledge in general.
- 509. Bodily condition.
- 510. Mental condition or capacity.
- 511. Handwriting.
- 512. Due care and proper conduct in general.
- 513. Construction and repair of structures, machinery, and appliances.
  - (1). In general.
  - (2). Buildings in general.
  - (3). Pulleys, derricks, and cranes.
  - (4). Sawmills.
  - (5). Elevators.
  - (6). Railroads in general.

**XII. OPINION EVIDENCE.(Cont'd)**

- (7). Street railroads.
- (8). Highways, streets, and sidewalks.
- (9). Bridges.
- (10). Telegraphs and telephones.
- (11). Mines.
- 514. Management and operation of vehicles, machinery, and appliances.
  - (1). In general.
  - (2). Vehicles.
  - (3). Railroads in general.
  - (4). Street railroads.
- 515. Conduct of business.
- 516. Custom or usage.
- 517. Laws of other states or countries.
- 518. Construction of written instruments.
- 519. Nature, condition, and relation of objects.
- 520. Quantity or capacity.
- 521. Value.
- 522. — In general.
- 523. — Services.
- 524. — Real property.
- 525. — Personal property.
- 526. Cause and effect.
- 527. — In general.
- 528. — Injuries to the person.
  - (.5). In general.
  - (1). Cause.
  - (2). Effect.
- 529. — Injuries to property.
- 530. Damages.
- 531. — In general.
- 532. — Injuries to the person.
- 533. — Injuries to property.
- 534. — Breach of contract.

**(C) COMPETENCY OF EXPERTS.**

- 534.5. In general.
- 535. Necessity of qualification.
- 535.5. Disqualification; bias or conflict of interest.
- 536. Knowledge, experience, and skill in general.
- 537. Bodily and mental condition.
- 538. Due care and proper conduct in general.
- 539. Machinery and mechanical devices and appliances.

**157. EVIDENCE****XII. OPINION EVIDENCE.**(Cont'd)

- 539.5. Construction and operation of railroads.
  - (1). In general.
  - (2). Distance within which car or train may be stopped.
  - (3). Speed.
- 540. Conduct of business, custom, or usage.
- 541. Laws of other states or countries.
- 542. Physical facts.
- 543. Value.
  - (1). In general.
  - (2). Services.
  - (3). Real property.
  - (4). Personal property.
- 543.5. Damages.
- 544. Cause and effect.
- 545. Preliminary evidence as to competency.
- 546. Determination of question of competency.

**(D) EXAMINATION OF EXPERTS.**

- 547. Mode of examination in general.
- 547.5. Certainty of testimony; probability, or possibility.
- 548. Questions and answers based on personal knowledge of expert.
- 549. Questions and answers based on facts testified to by expert.
- 550. Questions and answers based on testimony of others.
  - (1). In general.
  - (2). Medical experts.
- 551. Hypothetical questions and answers.
- 552. — In general.
- 553. — Form and sufficiency of questions.
  - (1). In general.
  - (2). Facts which must be included.
  - (3). Facts which may be assumed.
  - (4). Support of facts by evidence.
- 554. — Scope and sufficiency of answers.
- 555. Basis of opinion.
  - 555.1. — In general.
  - 555.2. — Necessity and sufficiency.
  - 555.3. — Disclosure, necessity and right.
  - 555.4. — Sources of data.
    - (1). In general.
    - (2). Speculation, guess, or conjecture.

**XII. OPINION EVIDENCE.**(Cont'd)

- (3). Hearsay or evidence otherwise incompetent.
- (4). Records or reports.
- (5). Opinions of others.
- (6). Examination of objects or premises.
- 555.5. — Cause and effect.
- 555.6. — Value.
  - (1). In general.
  - (2). Real property in general.
  - (3). Property remaining after condemnation; severance damages.
  - (4). Access.
  - (5). Improvements; reproduction cost.
  - (6). Capitalization of income; rents.
  - (7). Use of property; zoning considerations.
  - (8). Separate parcels; acreage or footage valuations.
  - (9). Minerals, trees, or timber.
  - (10). Comparable sales or values.
- 555.7. — Due care and proper conduct.
- 555.8. — Automobile cases.
  - (1). In general.
  - (2). Speed.
- 555.9. — Damages.
- 555.10. — Medical testimony.
- 556. References to authorities on subject.
- 557. Experiments and results thereof.
- 558. Cross-examination.
  - (1). In general.
  - (2). Control and discretion of court.
  - (3). Limitation to subjects of direct examination.
  - (4). Irrelevant, collateral, or immaterial matters.
  - (5). Facts which may be assumed.
  - (6). Facts unsupported by evidence.
  - (7). Discrediting witness or disparaging testimony in general.
  - (8). Testing knowledge or competency of witness.
  - (9). Facts forming basis of opinion.
  - (10). Experiments and results thereof.
  - (11). Reference to authorities on subject.
- 558.1. Re-examination.

**157. EVIDENCE****XII. OPINION EVIDENCE.(Cont'd)**

- 559. Corroboration.
- 560. Contradiction and impeachment.

**(E) COMPARISON OF HANDWRITING.**

- 561. Grounds for allowing comparison.
- 562. Writings to be proved.
- 563. Competency of expert.
- 564. Standard of comparison.
  - (1). In general.
  - (2). Genuineness.
  - (3). Papers in evidence or relevant to issues.
  - (4). Papers belonging to record.
- 565. Mode of making comparison.
- 566. Examination of expert.
- 567. Cross-examination.

**(F) EFFECT OF OPINION EVIDENCE.**

- 568. Opinions of witnesses in general.
  - (1). In general.
  - (2). Mental condition or capacity.
  - (3). Handwriting.
  - (4). Value.
  - (5). Space or distance.
  - (6). Rate of speed.
  - (7). Damages.
- 569. Testimony of experts.
- 570. — In general.
- 571. — Nature of subject.
  - (1). In general.
  - (2). Mental condition or capacity.
  - (3). Due care and proper conduct.
  - (4). Laws of other states or countries.
  - (5). Construction of written instruments.
  - (6). Nature, condition, and relation of objects.
  - (7). Value.
  - (8). Rate of speed.
  - (9). Cause and effect.
  - (10). Damages.
- 572. — Knowledge or skill of expert.
- 573. Comparison of handwriting.
- 574. Conflict with other evidence.

**XIII. EVIDENCE AT FORMER TRIAL OR IN OTHER PROCEEDING.**

- 575. Grounds for admission in general.

**XIII. EVIDENCE AT FORMER TRIAL OR IN OTHER PROCEEDING.(Cont'd)**

- 576. Death or disability of witness.
- 577. Absence of witness.
- 577.5. Nature of former proceeding.
- 578. Opportunity for cross-examination.
- 579. Identity of issues.
- 580. Identity of parties.
- 581. Preliminary evidence.
- 582. Mode of proof.
  - (1). In general.
  - (2). Testimony of witnesses.
  - (3). Minutes and notes of testimony.
  - (4). Bills of exceptions, statements of facts, etc.
- 583. Effect.

**XIV. WEIGHT AND SUFFICIENCY.**

- 584. Weight and conclusiveness in general.
  - (1). In general.
  - (2). Depositions.
  - (3). Number of witnesses.
- 585. Statutory provisions.
- 586. Positive and negative evidence.
  - (.5). In general.
  - (1). Nature.
  - (2). Effect of negative testimony.
  - (3). Weight in general.
- 587. Circumstantial evidence.
- 588. Credibility of witnesses in general.
- 589. Testimony of party.
- 590. Testimony of interested persons.
- 591. Conclusiveness of evidence on party introducing it.
- 592. Evidence introduced by adverse party.
- 593. Evidence improperly admitted.
- 594. Uncontroverted evidence.
- 595. Inferences from evidence.
- 596. Degree of proof in general.
  - (1). In general.
  - (2). In civil actions to recover statutory penalties or involving criminal offense.
  - (3). Parol evidence to change writing.
- 597. Sufficiency to support verdict or finding.
- 598. Preponderance of evidence.
  - (1). In general.
  - (2). Testimony of parties.
- 599. Elements of cause of action or claim.

**158. EXCEPTIONS, BILL OF**

**XIV. WEIGHT AND SUFFICIENCY.**(Cont'd)

- 600. Matters of defense and rebuttal.
- 601. Particular facts or issues.
  - (1). In general.
  - (2). Execution of written instrument.
  - (3). Indebtedness.
  - (4). Value.
  - (5). Identity.

**158. EXCEPTIONS, BILL OF**

**SUBJECTS INCLUDED**

- Statements in writing of exceptions taken to rulings or other action of the court at trials of civil causes, required for correction of errors at such trials
- Nature and scope of bills of exceptions in general
- In what cases and as to what objections such bills are available
- Requisites, contents, making and filing of such bills, and proceedings to compel settlement, signing, sealing and filing thereof

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Admiralty, exceptions in, see ADMIRALTY
- Appeals or writs of error, necessity of use of exceptions, hearing of exceptions in first instance by appellate court, and review of decisions relating to making bills of exceptions, see APPEAL AND ERROR, FEDERAL COURTS
- Criminal prosecutions, exceptions in, see CRIMINAL LAW
- Equity, exceptions to pleadings or other proceedings, see EQUITY
- New trial, necessity and use of exceptions on motions for, see NEW TRIAL
- Pleading, exceptions as mode of testing sufficiency, see PLEADING
- Trial, taking and noting exceptions, see TRIAL

- I. NATURE, FORM, AND CONTENTS IN GENERAL, ¶1–30.
- II. SETTLEMENT, SIGNING, AND FILING, ¶31–61.

**I. NATURE, FORM, AND CONTENTS IN GENERAL.**

- 1. Nature and purpose of remedy in general.
- 2. Statutory provisions.
- 3. Actions and proceedings in which bill is authorized.
- 4. Matters subject to exception.
- 5. Right to make bill.
- 6. Scope and contents of bill in general.
- 7. Setting forth errors or irregularities.
- 8. Setting forth objections, rulings, and exceptions.
- 9. Setting forth proceedings not shown by record.
- 10. Stating facts not shown by record.
- 11. Incorporating evidence.
  - 11.1. — In general.
- 12. — Necessity.
- 13. — Setting forth evidence in general.
- 14. — Stenographer's report.
- 16. — Abridgment.
- 17. Incorporating evidence excluded.
- 18. Incorporating instructions given.
- 19. Incorporating instructions refused.
- 20. Form and arrangement of bill.
- 21. Insertion of documents.
- 22. — In general.
- 23. — Skeleton bill.
- 24. Number of bills.
- 25. Joinder of parties in same bill.
- 26. Construction of bill.
- 27. Operation and effect of bill.
- 28. Use of same bill in different proceedings.
- 29. Effect on bill of motion for new trial.
- 30. Exceptions pendente lite.

**II. SETTLEMENT, SIGNING, AND FILING.**

- 31. Necessity of allowance or settlement.
- 32. Authority to allow or settle.
  - (1). In general.
  - (2). Judge presiding or making ruling.
  - (3). Effect of judge becoming incapacitated or ceasing to hold office.
  - (4). Authority of clerk.
- 33. Duty to prepare bill.

**158. EXCEPTIONS, BILL OF****II. SETTLEMENT, SIGNING,  
AND FILING.(Cont'd)**

- 34. Parties participating.
- 35. Time for presentation, allowance, and filing.
- 36. — In general.
  - (1). In general.
  - (2). In vacation.
  - (3). Effect of motion for new trial.
- 37. — At or after trial.
- 38. — During or after term.
- 39. — Time prescribed or allowed.
  - (.5). In general.
  - (1). Time prescribed by statute or rule of court.
  - (2). Time allowed by order of court.
- 40. — Extension of time.
  - (1). In general.
  - (2). Authority to order extension.
  - (3). Notice of application.
  - (4). Time for allowance.
  - (5). Grounds for extension.
  - (6). Showing extension in bill.
  - (7). By stipulation.
- 41. — Compliance with requirements.
  - (1). In general.
  - (2). Presentation in time and delay by judge.
  - (3). Perfecting in time and delay in filing.
  - (4). Delay caused by opposite party.
  - (5). Commencement of time.
  - (6). Showing compliance.
- 42. — Waiver of objections to delay.
- 43. — Presentation and allowance after expiration of time.
  - (1). In general.
  - (2). Excuses for delay.
- 44. — Allowance and filing nunc pro tunc.
- 45. Preparation and requisites of proposed bill.
- 46. Submission or service of proposed bill.
- 47. Proposed amendments or objections.
- 48. Notice of settlement.
- 49. Stipulations as to allowance or settlement.
- 50. Presentation for allowance or settlement.
- 51. Allowance or settlement by judge or other officer.
- 52. Resettlement.

**II. SETTLEMENT, SIGNING,  
AND FILING.(Cont'd)**

- 53. Compelling allowance or settlement.
  - (1). In general.
  - (2). Time for taking proceedings.
  - (3). Mandamus.
  - (3.1). — In general.
  - (4). — Grounds for allowance.
  - (5). — Defenses and objections to allowance.
  - (6). — Petition.
  - (7). — Hearing, decision and relief.
- 54. Procuring signatures or affidavits of bystanders.
- 55. Proceedings to establish exceptions.
  - (1). In general.
  - (2). Time for taking proceedings and notice.
  - (3). Petition.
  - (4). Proceedings, hearing, and decision.
- 56. Certificate, signature, and seal of judge.
  - (.5). In general.
  - (1). Necessity for certificate.
  - (2). Form and requisites of certificate.
  - (3). Construction and operation.
  - (4). Signature and seal.
- 57. Filing.
- 58. Service.
  - (1). In general.
  - (2). Time for service.
  - (3). Parties to be served.
  - (4). Acknowledgment and proof of service.
- 59. Amendment or correction.
  - (1). In general.
  - (2). Proceedings to establish.
  - (3). By agreement of parties.
  - (4). Time for amendment or correction.
  - (5). Compelling amendment.
  - (6). Supplemental bill.
- 60. Quashing or striking from files.
  - (.5). In general.
  - (1). Grounds.
  - (2). Time for motion.
  - (3). Motion.
- 61. Exceptions pendente lite.

**162. EXECUTORS AND ADMINISTRATORS****160. EXCHANGES****SUBJECTS INCLUDED**

Bodies formed by the incorporation or association of persons engaged in business of the same nature for the purpose of facilitating and regulating the transaction of such business among the members

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Alternative dispute resolution and arbitration, see ALTERNATIVE DISPUTE RESOLUTION

Commodity futures trading regulation, see COMMODITY FUTURES TRADING REGULATION

Corporations or unincorporated associations in general, see CORPORATIONS AND BUSINESS ORGANIZATIONS, ASSOCIATIONS

Execution, liability of seats or memberships in exchanges to levy of, see CREDITORS' REMEDIES

Securities exchanges, regulation, see SECURITIES REGULATION

**Subject matter formerly classified to this topic has been used in creating the topics COMMODITY FUTURES TRADING REGULATION and SECURITIES REGULATION. For the present classification of a particular case, see the Table of Cases.**

1. Nature and status in general.
2. Statutory provisions.
3. Incorporation and organization.
4. Constitution, by-laws, and rules.
5. Membership in general.
  - (1). In general.
  - (2). Expulsion or suspension of members.
  - (2.10). Disciplinary proceedings.
  - (3). Reinstatement of members.
6. Stock.
7. Property in seat or membership, and transfer thereof.
8. Dues, fines, and assessments.
9. Mutual dealings and liabilities of members.
  - 9.1. — In general.
  - 9.20. — Members' stockholders or partners; allied members.
10. Officers and committees.

10.10. Market specialists.

11. Regulation by exchanges of members' dealings with nonmembers.

(1). In general.

(2). Right of action for violation of rules.

(3). Commissions or other charges.

(4). Supervision of accounts; "know your customer" rule.

(5). Transfer of accounts.

(6). Credit or margin transactions.

(7). Liquidation of customers' accounts or assets.

(8). Insolvency or liquidation of members.

(9). Rights and liabilities of members' employees.

(10). Proceedings.

(13). Evidence and fact questions.

12. Rights and liabilities of exchanges as to non-members.

12.1. — In general.

12.10. — Duty to supervise members or enforce rules.

12.20. — Evidence and fact questions.

13. Quotations of prices and transactions.

13.10. Listing and delisting of items traded; suspension of trading.

13.20. Tobacco exchanges.

14. Actions by or against exchanges.

15. Dissolution.

**162. EXECUTORS AND ADMINISTRATORS****SUBJECTS INCLUDED**

General administration of decedents' estates under testamentary or judicial appointment

Rights, powers, duties and liabilities of executors or administrators in respect of the collection, management and disposition of their testators' or intestates' estates

Legal proceedings relating thereto

**162. EXECUTORS AND ADMINISTRATORS****SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Community property, administration of, see MARRIAGE AND COHABITATION

Partnership affairs, settlement by surviving partners or by statutory partnership administrators, see PARTNERSHIP

Rights of devisees, legatees, heirs and next of kin, see DESCENT AND DISTRIBUTION, WILLS

Taxation of estates, inheritance or succession, see INTERNAL REVENUE, TAXATION

Testamentary powers and trusts, see POWERS, TRUSTS, WILLS

Wills, probate, establishment, interpretation and effect, see WILLS

**I. ADMINISTRATION IN GENERAL,**  
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AND TENURE,** ⌋8–37.**III. ASSETS OF ESTATE,** ⌋38–73.

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(B) APPRAISAL AND INVENTORY,  
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**IV. COLLECTION AND MANAGEMENT  
OF ESTATE,** ⌋74–172.

(A) IN GENERAL, ⌋74–128.

(B) REAL PROPERTY AND INTERESTS THEREIN, ⌋129–152.

(C) PERSONAL PROPERTY,  
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WIFE, HUSBAND, OR CHILDREN,**  
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(A) LIABILITIES OF ESTATE,  
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(B) PRESENTATION, ⌋222–233.

(C) ALLOWANCE, ⌋234–241.

(D) DISPUTED CLAIMS, ⌋242–257.

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(A) WHEN AUTHORIZED, ⌋319–331.

(B) APPLICATION AND ORDER,  
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(B) PROCEEDINGS FOR ACCOUNTING,  
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(D) COMPENSATION, ⌋488–501.

(E) STATING, SETTLING, OPENING,  
AND REVIEW, ⌋502–516.

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⌋517–526.**XIII. LIABILITIES ON ADMINISTRATION  
BONDS,** ⌋527–537.**XIV. EXECUTORS DE SON TORT,**  
⌋538–544.**I. ADMINISTRATION IN GENERAL.**

1. Nature of the trust.

2. What law governs.

3. Necessity of administration.

(1). In general.

(2). Estate of husband or wife.

(3). Debts necessitating administration.

(4). Estate free from indebtedness.

(5). Proceedings to determine necessity.

4. Fact of death.

5. Fact of intestacy.

6. Intermeddling in administration.

7. Withdrawing estate from administration.

**II. APPOINTMENT, QUALIFICATION,  
AND TENURE.**

8. Jurisdiction of courts.

9. — In general.

10. — Domicile of decedent.

11. — Existence of assets.

12. — Situs of assets.

13. — Particular courts.

14. Appointment of executor.

15. Competency of person named as executor.

16. Acceptance or renunciation by executor.

17. Right to appointment as administrator.

(1). In general.

(2). Heirs and next of kin, or their representatives, in general.

**162. EXECUTORS AND ADMINISTRATORS****II. APPOINTMENT, QUALIFICATION,  
AND TENURE.(Cont'd)**

- (3). Husband or wife or their representatives.
- (4). Guardian of infants or insane next of kin.
- (5). Preference between kindred of same degree.
- (6). Creditors.
- (7). Nomination of third person by person within permissive degree of consanguinity.
- 18. Qualifications of administrator.
- 19. Renunciation of right to administer.
- 20. Proceedings for appointment.
  - (.5). In general.
  - (1). Nature of proceeding.
  - (2). Time for application.
  - (3). Persons entitled to make application.
  - (4). Notice.
  - (4.5). Parties.
  - (5). Petition or bill.
  - (5.5). Plea or answer.
  - (6). Objections to appointment.
  - (7). Evidence.
  - (8). Trial or hearing.
  - (8.5). Vacation appointment.
  - (9). Order of appointment.
  - (10). Review.
  - (11). Abandonment of application.
  - (12). Costs.
- 21. Administrator with will annexed.
  - (1). In general.
  - (2). Proceedings for appointment.
- 22. Temporary or special appointment.
  - (1). In general.
  - (2). Grounds for appointment.
  - (3). Proceedings for appointment.
- 23. Second or additional appointment.
- 24. Public administrators.
- 25. Acceptance and oath of office.
- 26. Bond.
  - (.5). In general.
  - (1). Of executors.
  - (2). Of administrators.
- 27. Issuance of letters.
- 28. Evidence of appointment or authority.
- 29. Operation and effect of appointment.

**II. APPOINTMENT, QUALIFICATION,  
AND TENURE.(Cont'd)**

- (1). In general.
- (2). Collateral attack in general.
- (3). Want of jurisdiction.
- (4). Errors and irregularities.
- (5). Matters concluded.
- (6). Presumptions.
- 30. Failure to qualify or act.
- 31. Termination of authority in general.
- 32. Revocation of letters.
  - (.5). In general.
  - (1). Grounds for or objections to revocation.
  - (2). Application and proceedings thereon.
- 33. Resignation and discharge.
- 34. Disqualification.
- 35. Removal.
  - (.5). In general.
  - (1). Grounds in general.
  - (2). Hostility or adverse interest.
  - (3). Fraud.
  - (4). Misconduct respecting sale of property of estate.
  - (5). Failure to account.
  - (6). Change of residence or absence from state.
  - (7). Insolvency.
  - (8). Waste, negligence, or mismanagement.
  - (8.5). Grounds for refusing to remove.
  - (9). Coexecutors and coadministrators.
  - (10). Nature and form of proceeding.
  - (10.5). Defenses.
  - (11). Persons entitled to apply.
  - (12). Jurisdiction.
  - (12.5). Time for application.
  - (13). Notice.
  - (13.5). Parties.
  - (14). Pleading.
  - (15). Evidence.
  - (16). Trial or hearing.
  - (17). Order.
  - (18). Costs.
  - (19). Review.
  - (20). Operation and effect.
  - (21). Setting aside removal.
- 36. Death.



**162. EXECUTORS AND ADMINISTRATORS****II. APPOINTMENT, QUALIFICATION,  
AND TENURE.(Cont'd)**

- 37. Administrators de bonis non.
  - (1). In general.
  - (2). Grounds for appointment.
  - (3). Right to appointment.
  - (4). Jurisdiction and proceedings.
  - (5). Operation and effect of appointment.

**III. ASSETS OF ESTATE.****(A) IN GENERAL.**

- 38. Property constituting assets in general.
- 39. Real property and estates and interests therein.
- 40. Proceeds of sale of real property.
- 41. Rents and profits.
- 42. Crops and products of land.
- 43. Personal property in general.
- 44. Interests in partnerships.
- 45. Trust estates and other equitable estates and interests.
- 46. Interests under insurance policies.
- 47. Legacies and distributive shares.
- 48. Debts and rights of action.
- 49. — In general.
- 50. — Debts due from executor or administrator.
- 51. — Right of action for death of decedent.
- 52. — Evidence of indebtedness.
- 53. Exempt property.
- 54. Ownership of property at time of death.
- 55. — In general.
- 56. — Property disposed of by decedent.
- 57. — Property fraudulently conveyed.
- 58. — Property accruing after death.
- 59. — Evidence of ownership.
- 60. Foreign assets.
- 61. Legal and equitable assets.

**(B) APPRAISAL AND INVENTORY.**

- 62. In general.
- 63. Necessity and purpose.
- 64. Time for making.
- 65. Proceedings to compel.
- 66. Property to be included.
- 67. Making appraisal.
- 68. Requisites and sufficiency of inventory.

**III. ASSETS OF ESTATE.(Cont'd)**

- 69. Defects and objections.
- 70. Amendment and correction.
- 71. Additional or supplemental inventory.
- 72. Operation and effect.
- 73. Failure to make.

**IV. COLLECTION AND MANAGEMENT  
OF ESTATE.****(A) IN GENERAL.**

- 74. Representation of decedent.
- 75. Representation of creditors and distributees.
- 76. Jurisdiction of courts.
- 77. Powers before issue of letters or qualification.
- 78. Powers pending contest of will.
- 79. Powers pending appeal from appointment.
- 80. Delegation of powers.
- 81. Execution of provisions of will in general.
- 82. Instructions of court.
- 83. Discovery and collection of assets.
- 83.1. — In general.
- 84. — Authority and duty in general.
- 85. — Proceedings for discovery of assets.
  - (.5). In general.
  - (1). Nature and form of remedy.
  - (1.5). Scope of inquiry and questions considered.
  - (2). Persons by or against whom proceedings may be brought.
  - (3). Property as to which discovery may be obtained.
  - (4). Jurisdiction.
  - (4.5). Parties and process or notice.
  - (5). Petition, affidavit, and interrogatories.
  - (5.1). Evidence.
  - (5.5). Answer.
  - (6). Hearing and examination.
  - (7). Dismissal.
  - (8). Judgment and review.
  - (9). Proceedings against executor or administrator.
- 86. — Collection and protection of assets in general.
  - (.5). In general.
  - (1). Authority and duty in general.

**162. EXECUTORS AND ADMINISTRATORS****IV. COLLECTION AND MANAGEMENT  
OF ESTATE.(Cont'd)**

- (2). Property in possession of or claimed by heirs, distributees, and others.
- (3). Payments to executor or administrator.
- (4). Extending time for payment.
- 87. — Compromise or release of claims.
- 88. — Debts due from executor or administrator.
- 89. — Failure to collect.
- 90. Custody and management of estate.
- 91. — In general.
- 92. — Performance of decedent's obligations.
- 93. — Continuance of decedent's business.
  - (1). In general.
  - (2). Provisions of will.
- 94. Partnership.
- 95. Contracts.
- 96. — In general.
- 97. — Services.
- 98. — Borrowing money.
- 99. — Bills and notes.
- 100. — Guaranty or suretyship.
- 101. Investments.
- 102. — In general.
- 103. — Loss or depreciation.
- 104. Interest on funds of estate.
  - (1). In general.
  - (2). Failure to invest funds or deposit them in interest-paying bank.
  - (3). Mingling and using funds for individual benefit.
  - (4). Delay in settlement of estate.
  - (5). Assets reserved to meet contingencies.
  - (6). Rate and computation of interest.
- 105. Deposits.
- 106. Loans.
- 107. Gifts.
- 108. Expenditures.
- 109. — In general.
  - (1). In general.
  - (2). Funeral expenses, tombstones, and burial places.
  - (3). Services.
  - (4). Traveling expenses.
  - (5). Procuring bond.

**IV. COLLECTION AND MANAGEMENT  
OF ESTATE.(Cont'd)**

- 110. — Taxes.
- 111. — Counsel fees and costs.
  - (1). In general.
  - (2). Procuring appointment as administrator.
  - (3). Probate and contest of will.
  - (4). Resisting claims against estate.
  - (5). Services that should have been performed by executor or administrator.
  - (6). Amount of fees.
  - (7). Separate counsel to coexecutors or coadministrators.
  - (8). Legal proceedings made necessary by acts of executor or administrator.
  - (9). Individual interest of executor or administrator in proceeding.
- 112. Submission to arbitration.
- 113. Confession of judgment.
- 114. Estoppel.
- 115. Individual interest in transactions.
- 116. Fraud.
- 117. Waste, conversion, or embezzlement of assets.
- 118. Loss of assets.
- 119. Torts.
- 120. Administrators de bonis non.
  - (.5). In general.
  - (1). Powers of successor of administrator.
  - (2). Powers and liabilities of successor of executor in general.
  - (3). Power of sale under will.
- 121. Administrators with will annexed.
  - (1). In general.
  - (2). Power of sale under will.
- 122. Temporary or special administrators.
  - (.5). In general.
  - (1). Authority and duty in general.
  - (2). Collection and disposition of assets.
  - (3). Expenditures.
- 123. Coexecutors and coadministrators.
- 123.1. — In general.
- 124. — Joint or several authority.
- 125. — Joint or several liability.
- 126. — Acting executor or administrator.

**162. EXECUTORS AND ADMINISTRATORS****IV. COLLECTION AND MANAGEMENT  
OF ESTATE.(Cont'd)**

- 127. — Surviving executor or administrator.
- 128. Representatives of deceased executors or administrators.
- (B) REAL PROPERTY AND INTERESTS THEREIN.**
- 129. Title and authority in general.
  - (1). In general.
  - (2). Actions for trespass and waste.
  - (3). Actions to quiet or remove cloud from title.
- 130. Possession and use.
  - (1). In general.
  - (2). Actions to recover possession.
- 131. Rents and profits.
- 132. Repairs and improvements.
- 133. Mortgaged and incumbered property.
- 134. Leaseholds of decedent.
- 135. Contracts of decedent.
- 136. Sale.
  - 136.1. — In general.
- 137. — Authority and duty in general.
- 138. — Power under will.
  - (1). In general.
  - (2). Implied power.
  - (3). Control by court.
  - (4). Purposes of sale.
  - (5). Who may exercise.
  - (6). Time for exercising.
  - (7). Property subject to sale.
  - (8). Duration and termination of power.
  - (9). Execution of power and confirmation of sale.
- 139. — Delegation of power.
- 140. — Time for making.
- 141. — Manner and conduct.
- 142. — Terms and conditions.
- 143. — Validity.
- 144. — Purchase by executor or administrator.
- 145. — Conveyance.
- 146. — Payment or recovery of purchase money.
- 147. — Application of proceeds.
- 148. — Title and rights of purchasers.
- 149. — Setting aside.

**IV. COLLECTION AND MANAGEMENT  
OF ESTATE.(Cont'd)**

- 150. Lease.
- 151. Mortgage.
- 152. Property acquired by executor or administrator.
- (C) PERSONAL PROPERTY.**
- 153. Title and authority in general.
- 154. Possession and use.
- 155. Pledged and mortgaged property.
- 156. Contracts of decedent.
- 157. Sale.
  - 157.1. — In general.
- 158. — Authority and duty in general.
- 159. — Time for making.
- 160. — Manner and conduct.
- 161. — Terms and conditions.
- 162. — Validity.
- 163. — Purchase by executor or administrator.
- 164. — Conveyance and transfer.
- 165. — Payment or recovery of price.
- 166. — Application of proceeds.
- 167. — Title and rights of purchasers.
- 168. — Setting aside.
- 169. Mortgage or pledge.
- 170. Indorsement and transfer of bills and notes.
- 171. Assignment and transfer of rights of action.
- 172. Property acquired by executor or administrator.
- V. ALLOWANCES TO SURVIVING WIFE,  
HUSBAND, OR CHILDREN.**
- 173. Nature and purpose in general.
- 174. Constitutional and statutory provisions.
- 175. Quarantine or other occupation or use of property.
- 176. Maintenance and support.
- 177. Specific articles.
- 178. Amount or value.
- 179. Additional to dower or other interest.
- 180. Persons entitled.
- 181. Property subject to allowance.
- 182. Priority over other claims.
- 183. Bar, waiver, or relinquishment.
- 184. — In general.

**162. EXECUTORS AND ADMINISTRATORS****V. ALLOWANCES TO SURVIVING WIFE,  
HUSBAND, OR CHILDREN.(Cont'd)**

- 185. — Antenuptial or postnuptial agreement.
- 186. — Testamentary provisions.
- 187. — Separate estate or homestead.
- 188. — Misconduct, separation, or divorce.
- 189. — Relinquishment after death of decedent.
- 190. — Delay in making application.
- 191. Selection by persons entitled.
- 192. Setting apart by executors or administrators.
- 193. Setting apart by appraisers.
- 194. Allowance by court.
  - (1). In general.
  - (2). Jurisdiction.
  - (3). Parties and pleading.
  - (4). Objections and exceptions.
  - (5). Evidence.
  - (5.5). Trial and new trial.
  - (6). Judgment or order.
  - (7). Review.
- 195. Effect of allowance.
- 196. Increase or further allowance.
- 197. Decrease or revocation.
- 198. Deficiency.
- 199. Improper or excessive allowance.
- 200. Rights of creditors.
- 201. Rights of distributees or heirs.

**VI. CLAIMS AGAINST ESTATE.****(A) LIABILITIES OF ESTATE.**

- 202. Obligations of estate in general.
- 202.2. Contingent and unmatured claims.
- 202.4. Contracts in general.
- 202.5. Personal contracts.
- 202.10. Bills, notes, and checks.
- 202.15. Bonds, mortgages, and pledges.
- 203. Joint contracts.
- 204. Services rendered to decedent.
- 205. — In general.
- 205.1. — Amount of allowance.
- 206. — Persons in family relation.
  - (1). In general.
  - (2). Implied contracts.
  - (3). Express promise by decedent to make compensation.
  - (4). Amount of allowance.

**VI. CLAIMS AGAINST ESTATE.(Cont'd)**

- 207. Loans or advances to decedent.
- 208. Covenants of decedent.
- 209. Contracts of guaranty by decedent.
- 210. Agreements by decedent to make will.
- 210.5. Trust funds, claims for.
- 210.8. Debts payable after death.
- 211. Torts of decedent.
- 212. Taxes.
- 213. Claims barred by limitation.
- 213.5. Claims arising after death of decedent in general.
- 214. Funeral expenses.
- 215. Tombstones and monuments.
- 216. Services rendered to estate.
  - (1). In general.
  - (2). Services of attorneys.
- 217. Loans or advances to estate.
- 218. Expenses of administration.
- 219. Claims of executors and administrators.
- 219.5. Domestic relations, claims arising out of.
- 219.6. — In general; contracts between husband and wife.
- 219.7. — Alimony and support.
  - (1). In general.
  - (2). Claims accruing after death.
- 219.8. — Support and maintenance furnished family by others.
- 219.9. Miscellaneous claims.
- 220. Claims purchased by persons interested in estate.
- 221. Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (1.1). — In general.
  - (2). — Services rendered to decedent.
  - (3). Admissibility.
  - (4). Weight and sufficiency.
  - (4.1). — In general.
  - (5). — Services rendered to decedent.
  - (6). — Loans and advances.
  - (7). — Agreements by decedent to make will or other conveyance of property.
  - (8). — Partnership transactions.

**162. EXECUTORS AND ADMINISTRATORS****VI. CLAIMS AGAINST ESTATE.(Cont'd)**

- (9). — Obligation evidenced by written instrument.
- (10). — Claims of executors and administrators.

**(B) PRESENTATION.**

- 222. Necessity for presentation in general.
  - (1). In general.
  - (2). Presentation as condition precedent to continuing suit.
  - (3). Knowledge of executor or administrator of existence of debt.
- 223. Statutory provisions.
- 224. Claims which must be presented.
- 225. Time for presentation.
  - (1). In general.
  - (2). Computation of period of limitation in general.
  - (3). Contingent and unmatured claims.
  - (4). Claims of executors and administrators.
  - (5). Absence or nonresidence of claimant or personal representative.
  - (6). Personal disabilities and privileges.
  - (7). Extension of time.
  - (8). Laches.
  - (9). Claims not presented in time as claims against assets subsequently discovered or inventoried.
- 226. Notice to creditors.
- 227. Statement and verification of claim.
  - (.5). In general.
  - (1). Form, requisites, and sufficiency of claim.
  - (2). Filing or attaching instrument or account on which claim is based.
  - (3). Verification.
  - (4). Defects, objections, and waiver.
  - (5). Amendment.
  - (6). Issues, proof, and variance.
  - (7). Claims of executors and administrators.
- 228. Presentation and filing.
  - (1). In general.
  - (2). Persons who may present or file claims.

**VI. CLAIMS AGAINST ESTATE.(Cont'd)**

- (3). Sufficiency of presentation or filing.
  - (3.5). Withdrawal of claims.
  - (4). Evidence.
  - (5). Defects, objections, and waiver.
  - 229. Effect of presentation.
  - 230. Failure to present.
  - 231. — In general.
  - 232. — Excuses.
  - 233. — Relief.
- (C) ALLOWANCE.**
- 234. Allowance by executors or administrators.
  - 235. Allowance by commissioners.
  - 236. Approval or allowance by court.
  - 237. Order or decree.
  - 238. Setting aside allowance or disallowance.
  - 239. Review.
  - 240. Costs.
  - 241. Effect of allowance or disallowance.
- (D) DISPUTED CLAIMS.**
- 242. Contest of claims in general.
  - 243. Statutory provisions.
  - 244. Persons who may contest claims.
  - 245. Objections and exceptions to claims.
  - 246. Arbitration or reference.
  - 247. Hearing by commissioners.
  - 248. Trial by probate court.
  - 248.1. — In general.
  - 249. — Nature and form of proceeding.
  - 250. — Jurisdiction.
  - 251. — Proceedings.
  - 252. — Evidence.
  - 253. — Hearing.
  - 254. — Findings and decision.
  - 255. Judgment.
  - 256. Review.
    - (1). In general.
    - (2). Appealable orders.
    - (3). Right of review.
    - (4). Presentation in lower court or tribunal of grounds of review.
    - (5). Requisites and proceedings for perfecting appeal.
    - (6). Scope and extent of review.

**162. EXECUTORS AND ADMINISTRATORS****VI. CLAIMS AGAINST ESTATE.(Cont'd)**

- (7). Amendments, additional proof, and trial of cause anew.
- (8). Determination and disposition of cause.
- 257. Costs.
- (E) PRIORITIES AND PAYMENT.**
- 258. Authority and duty to make payment.
- 259. Statutory classification and order of payment.
- 260. — In general.
- 261. — Particular classes of claims.
- 262. — Proceedings for classification.
- 263. Rights of creditors to priority.
- 264. Secured claims.
  - (1). In general.
  - (2). Effect of allowance or presentation of claim.
- 265. Claims of executor or administrator.
- 266. Advances to pay claims.
- 267. Interest.
- 268. Attorney fees and expenses of creditors.
- 269. Compromises by creditors.
- 270. Property available for payment.
- 271. — In general.
- 272. — Personal and real property.
- 273. — Legal and equitable assets.
- 274. — Marshaling assets.
- 275. Mode and sufficiency of payment; set-off.
- 276. Effect of payment.
- 277. Time for making payment in general.
- 278. Payment before allowance or order.
- 279. Payment by mistake.
- 280. Overpayment.
- 281. Improper payments.
- 282. Failure to make payment.
- 283. Proceedings to enforce payment.
- 284. Deficiency of assets in hand.
- 285. Reservation of assets to meet contingencies.
- 286. Release by creditors.
- 287. Liability to refund.

**VII. DISTRIBUTION OF ESTATE.**

- 288. Authority and duty to make in general.
- 289. Priority of debts to legacies or distributive shares.

**VII. DISTRIBUTION OF ESTATE.(Cont'd)**

- 290. Admission of or charging with assets.
  - 291. Assent to legacy or devise.
  - 292. Executor as legatee.
  - 293. Administrator as distributee.
  - 294. Liabilities of legatee or distributee to estate.
  - 295. Time for delivery or payment of legacy.
  - 296. Time for making distribution.
  - 297. Requirement of receipt or release.
  - 298. Security from legatee for life.
  - 299. Refunding bond or other indemnity.
  - 300. Delivery of specific legacy.
  - 301. Advances by executor or administrator.
  - 302. Mode and sufficiency of payment.
  - 303. — In general.
    - (1). In general.
    - (2). To whom payment may be made in general.
    - (3). Payment to county or state or into court.
  - 304. — Legatees or distributees under disability.
  - 305. Evidence of payment.
  - 306. Payment of annuities.
  - 307. Effect of payment or distribution.
  - 308. Improper payment in general.
  - 309. Payment before order or decree.
  - 310. Overpayment.
  - 311. Payment to wrong person.
  - 312. Failure to make payment or distribution.
  - 313. Interest on legacies and distributive shares.
  - 314. Proceedings for payment or distribution.
    - (.5). In general.
      - (1). Nature and form of remedy.
      - (2). Jurisdiction.
      - (3). Right to distribution and objection thereto.
      - (4). Citation or notice.
      - (5). Time of proceedings, limitations, and laches.
- See also LIMITATION OF ACTIONS.*
- (6). Parties.
  - (7). Pleading.
  - (8). Evidence.
  - (9). Appointment and proceedings of auditor, commissioners, or distributors.

**162. EXECUTORS AND ADMINISTRATORS****VII. DISTRIBUTION OF ESTATE.(Cont'd)**

- (10). Examination and settlement of account, and appraisal.
- (11). Hearing and determination.
- (12). Appeal.
- (13). Costs and attorney fees.
- 315. Order or decree for distribution.
- 315.1. — In general; form and requisites; relief awarded.
- 315.2. — Entry of judgment.
- 315.3. — Amendment and correction.
- 315.4. — Opening and vacating.
- 315.5. — Construction and operation.
- 315.6. — Conclusiveness.
  - (1). In general.
  - (2). Matters concluded.
  - (3). Collateral attack.
- 315.7. — Execution and enforcement of decree.
- 315.8. — Interest on award.
- 315.9. — Order or decree for partial distribution.
- 316. Reservation of assets.
- 317. Restitution on reversal of order or decree.
- 318. Liability to refund on deficiency of assets.

**VIII. SALES AND CONVEYANCES UNDER ORDER OF COURT.****(A) WHEN AUTHORIZED.**

- 319. Nature of remedy.
- 320. Statutory provisions.
- 321. For purposes of administration in general.
- 322. For payment of debts.
  - 322.1. — In general.
- 323. — Necessity in general.
- 324. — Existence and validity of debts.
- 325. — Insufficiency of personalty.
- 326. For payment of legacies or distribution.
- 327. Effect of testamentary provisions.
- 328. Persons entitled to apply.
- 329. Property or interests subject to disposal.
  - (1). In general.
  - (2). Homestead.
- 330. Amount to be sold or otherwise disposed of.

**VIII. SALES AND CONVEYANCES UNDER ORDER OF COURT.(Cont'd)**

- 331. Payment or security to prevent disposal of property.

**(B) APPLICATION AND ORDER.**

- 332. Form of proceeding.
- 333. Jurisdiction.
- 334. Time for application.
- 335. Parties.
- 336. Petition or other application.
- 337. Citation or notice.
- 338. Objections and exceptions.
- 339. Hearing of application in general.
- 340. Proof and contest of claims.
- 341. Determination as to sufficiency of personalty.
- 342. Account of administration.
- 343. Determination as to necessity for sale, mortgage, or lease.
- 344. Claims to property.
- 345. Order or decree.
  - 345.1. — In general.
- 346. — Requisites in general.
- 347. — Description of property.
- 348. — Modification, amendment, or vacation.
- 349. — Operation and effect.
  - (1). In general.
  - (2). Collateral attack.
- 350. Oath.
- 351. Special bond for sale.
- 352. Special appointment to sell or convey.
- 353. Appraisal of property to be sold.
- 354. Second application.
- 355. Proceedings to compel application.
- 356. Actions for sale.
- 357. Restraining sale.
- 358. Review.
  - (.5). In general.
  - (1). Nature and form of remedy and appellate jurisdiction.
  - (2). Persons entitled to review and decisions reviewable.
  - (3). Proceedings for and effect of appeal.
  - (4). Mode and extent of review, and determination and disposition of cause.
- 359. Failure to procure sale.

**162. EXECUTORS AND ADMINISTRATORS****(C) SALE.**

- 360. Authority and powers in making sale in general.
- 361. Statutory provisions.
- 362. Notice.
- 363. Manner and conduct.
- 364. Terms and conditions.
- 365. Persons who may purchase.
- 366. Bids or offers.
- 367. Validity in general.
- 368. Payment of purchase money.
- 369. Failure of bidder to complete purchase.
- 370. — In general.
- 371. — Resale.
- 372. — Liabilities of bidder.
- 373. — Actions on bids.
- 374. Report or return.
- 375. Confirmation.
- 376. Persons who may question validity.
- 377. Estoppel and ratification of invalid sale.
- 378. Curative statutes.
- 379. Opening or vacating.
- 380. Actions to set aside.
  - (.5). In general.
  - (1). Grounds of action and conditions precedent.
  - (1.5). Nature and form of remedy.
  - (2). Jurisdiction, limitations, and laches.
  - (2.5). Parties.
  - (3). Pleading and evidence.
  - (4). Trial, judgment, and review.
- 381. Effect of setting aside.
- 382. Resale on setting aside.
- 383. Collateral attack.
- 384. Operation and effect in general.
- 385. Effect on rights of creditors.
- 386. Rights of devisees and heirs.
- 387. Rights of surviving husband or wife, or their successors in interest.
- 388. Title and rights of purchasers and their privies.
  - (1). In general.
  - (2). What passes by sale in general.
  - (3). Rents, profits, crops, and timber.
  - (4). Caveat emptor and warranty.
  - (5). Bona fide purchasers.
  - (6). Remedies.
  - (7). When title passes.

**VIII. SALES AND CONVEYANCES UNDER ORDER OF COURT.(Cont'd)**

- 389. Rights and remedies of purchasers on avoidance of sale.
- 390. Liabilities of purchasers.
- 391. Liabilities of executor or administrator.
- 392. Liabilities on bonds for sale.

**(D) CONVEYANCE.**

- 393. Necessity and nature in general.
- 394. Authority to make.
- 395. Right to conveyance.
- 396. Time for making.
- 397. Deed to purchaser.
- 398. Mortgage.
- 399. Lease.

**(E) PROCEEDS.**

- 400. Disposition in general.
- 401. Costs and expenses.
- 402. Mortgages and other liens.
- 403. Payment of debts.
- 404. Right to surplus.
- 405. Surplus proceeds of sale on foreclosure paid into probate court.
- 406. Proceedings for distribution.
- 407. Liabilities of purchaser or mortgagee as to application of proceeds.

**IX. INSOLVENT ESTATES.**

- 408. Administration in general.
- 409. Grounds for declaration of insolvency.
- 410. Proceedings on reporting or declaring insolvency.
- 411. Effect of insolvency upon previous acts and proceedings.
- 412. Appointment and powers of commissioners.
- 413. Management of estate.
- 414. Sales and conveyances under order of court.
- 415. Presentation, proof, and allowance of claims.
- 416. Payment of claims.
- 417. Rights and remedies of creditors.
- 418. Distribution and settlement.
- 419. Review of proceedings.

**X. ACTIONS.**

- 420. Capacity to sue and be sued in general.



**162. EXECUTORS AND ADMINISTRATORS****X. ACTIONS.**(Cont'd)

- 421. Nature and form.
- 422. Statutory provisions.
- 423. Actions by creditors and others interest-  
ed in estate.
- 424. Rights of action between coexecutors or  
coadministrators.
- 425. Rights of action by executors or adminis-  
trators.
- 426. — In general.
- 427. — Personal or representative capaci-  
ty.
- 428. Rights of action against executors or  
administrators.
- 429. — In general.
- 430. — Personal or representative capaci-  
ty.
- 431. Conditions precedent.
  - (1). In general.
  - (2). Presentation of claim to executor  
or administrator in general.
  - (3). Foreclosure of mortgage or other  
lien.
- 432. Defenses against executors or adminis-  
trators.
- 433. Defenses by executors or administrators.
- 434. Set-off and counterclaim.
  - (.5). In general.
  - (1). In actions by executors and ad-  
ministrators.
  - (1.1). — In general.
  - (2). — As between debts arising be-  
fore, and those accruing after  
death of decedent.
  - (3). — Legacy or distributive share.
  - (4). — Effect of insolvency of es-  
tate.
  - (5). — Presentation, proof, and de-  
mand as condition precedent to  
right of set-off.
  - (6). — Time of interposing.
  - (7). In actions against executors and  
administrators.
- 435. Jurisdiction.
- 436. Venue.
- 437. Time to sue, and limitations.  
*See also LIMITATION OF ACTIONS.*
  - (.5). In general.
  - (1). Actions by executors or adminis-  
trators.

**X. ACTIONS.**(Cont'd)

- (2). Time within which actions against  
executors or administrators are  
prohibited.
- (3). Bar of actions against executors  
and administrators in general.
- (4). Computation of period of limita-  
tion in general.
- (5). Request for delay.
- (6). Effect of appointment of new ad-  
ministrator.
- (7). Presentation and allowance or re-  
jection of claim.
- (8). Rights as against new or uninven-  
toried assets.
- 438. Parties.
  - (1). In general.
  - (2). Making executor or administrator  
defendant upon refusal to sue.
  - (3). Executor or administrator as both  
plaintiff and defendant in same  
action.
  - (4). Joinder of coexecutors or coad-  
ministrators.
  - (5). Legatees, heirs, and distributees  
as parties in general.
  - (6). Recovery and protection of prop-  
erty of estate in general.
  - (7). Actions on claims against estate.
  - (8). Actions concerning real estate.
  - (9). Foreclosure of liens and mortgag-  
es.
  - (10). Enforcement or rescission of  
contracts of deceased.
  - (11). Action to recover legacy or dis-  
tributive share.
- 439. Joinder or intervention in actions by oth-  
ers.
- 440. Removal or death pending action.
- 441. Process and appearance.
- 442. Pleading.
- 443. — In general.
  - (1). In general.
  - (2). Matters of defense in general.
  - (3). Allegation or denial of title or  
authority.
  - (4). Averment of jurisdictional facts.
  - (5). Allegation or denial of indebted-  
ness.

**162. EXECUTORS AND ADMINISTRATORS****X. ACTIONS.**(Cont'd)

- (6). Allegation or denial as to assets and claims against estate.
- (7). Allegation or denial as to conditions precedent.
- (8). Verification.
- 444. — Allegation and denial of representative capacity.
  - (1). In general.
  - (2). Requisites and sufficiency in general.
  - (3). Capacity in which suit is maintained.
- 445. — Profert and oyer of letters.
- 446. — Plea of plene administravit.
- 447. — Demurrer.
- 448. — Amendment.
- 449. — Issues, proof, and variance.
- 450. Evidence.
- 451. Trial.
  - (1). In general.
  - (2). Questions for jury.
  - (3). Instructions.
  - (4). Verdict and findings.
- 452. New trial.
- 453. Judgment.
  - (.5). In general.
  - (1). Judgment by confession or default.
  - (2). Rendition, form, and requisites.
  - (3). Record and amendment.
  - (4). Conclusiveness, operation, and effect.
- 454. Execution and enforcement of judgment.
- 455. Appeal and error.
- 456. Costs.
  - (1). In general.
  - (2). Persons, property, and fund liable in general.
  - (3). Liability of executor or administrator in general.
  - (4). Unreasonable resistance, and refusal to refer claim or consent to determination on settlement of accounts.
  - (5). Individual liability of executor or administrator.
  - (6). Award or certificate.
  - (7). Enforcement.

**X. ACTIONS.**(Cont'd)

- 457. Liabilities for conduct of action or defense.

**XI. ACCOUNTING AND SETTLEMENT.****(A) DUTY TO ACCOUNT.**

- 458. Nature and grounds.
- 459. Time for accounting.
- 460. Who entitled to require accounting.
- 461. Who liable in general.
- 462. Acting in different capacities.
- 463. Coexecutors or coadministrators.
- 464. Successors and representatives.
- 465. Property to be included.
- 466. Release from liability.
- 467. Failure to account.

**(B) PROCEEDINGS FOR ACCOUNTING.**

- 468. Nature and form of remedy.
- 469. Jurisdiction of courts.
  - (1). In general.
  - (2). After death, removal, or resignation of executor or administrator.
  - (3). After final settlement and discharge.
- 470. Limitations and laches.
- 471. Proceedings by executor or administrator.
- 472. Special proceedings to compel accounting.
- 473. Actions for accounting, and administration suits.
  - (1). In general.
  - (2). Parties and process.
  - (3). Pleading.
  - (4). Evidence.
  - (5). Trial, judgment, and review.
  - (6). Costs.

**(C) CHARGES AND CREDITS.**

- 475. Charges in general.
- 476.5. Increase of assets.
- 477. Rents, profits, and income.
- 478. Interest.
- 479. Credits in general.
- 480. Decrease of assets.
- 481. Payment of claims.
- 482. Expenses of administration.

**162. EXECUTORS AND ADMINISTRATORS****XI. ACCOUNTING AND SETTLEMENT.(Cont'd)**

- 483. Disbursements for benefit of real property.
- 484. Disbursements for benefit of legatees or distributees.
- 485. Counsel fees and costs.
- 486. Debts and payments to self.
- 487. Expenses of account.

**(D) COMPENSATION.**

- 488. Right to compensation in general.
- 489. Statutory provisions.
- 489.5. Tax on commissions.
- 490. Effect of testamentary provisions.
- 491. Effect of agreements.
- 492. Waiver of right.
- 493. Jurisdiction of courts.
- 494. For what services allowed.
- 495. Commissions.
  - (.5). In general.
  - (1). On what charges, credits, or property allowed in general.
  - (2). Acting in different capacities.
  - (3). On real property and rents thereof.
  - (4). On property not assets of estate.
  - (5). On proceeds of sale of assets.
  - (6). On legacies and distributive shares.
  - (7). Investment and continuance of decedent's business.
- 496. Amount and computation of compensation.
  - (1). In general.
  - (2). Commissions.
  - (3). Allowance of gross sum.
- 497. Extra allowances.
- 498. Coexecutors and coadministrators.
- 499. Successive administrations.
- 500. Forfeiture or deprivation of compensation.
- 501. Proceedings and order for allowance.

**(E) STATING, SETTLING, OPENING, AND REVIEW.**

- 502. Form and requisites of account.
- 503. Vouchers and proof of payment.
- 504. Objections and exceptions.
  - (1). In general.
  - (2). Persons entitled to object.

**XI. ACCOUNTING AND SETTLEMENT.(Cont'd)**

- (3). Time for making or filing.
  - (4). Bar, estoppel, and waiver.
  - (5). Form and sufficiency.
  - (6). Questions subject to determination on objections or exceptions.
  - (7). Proceedings and order on objections or exceptions.
  - 505. Examination of executor or administrator.
  - 506. Evidence.
    - (.5). In general.
    - (1). Presumptions and burden of proof.
    - (2). Admissibility.
    - (3). Weight and sufficiency.
  - 507. Hearing or reference.
    - (.5). In general.
    - (1). Scope of inquiry by court.
    - (2). Hearing by court in general.
    - (3). Submission of issues to jury.
    - (4). Reference.
  - 508. Order or decree.
    - (1). In general.
    - (2). Construction and operation.
    - (3). Enforcement.
  - 509. Opening or vacating.
    - (.5). In general.
    - (1). Nature and scope of remedy.
    - (2). Jurisdiction.
    - (3). Persons entitled to maintain proceedings.
    - (4). Grounds.
    - (5). Limitations and laches.
- See also LIMITATION OF ACTIONS.*
- (6). Application.
  - (7). Parties and process.
  - (8). Evidence.
  - (9). Hearing and determination.
  - (10). Operation and effect of opening or vacating settlement.
  - (11). Correction of errors in intermediate or partial accounts.
  - 510. Review.
    - (.5). In general.
    - (1). Nature and form of remedy in general.
    - (2). Decisions reviewable.
    - (3). Right of review.

**162. EXECUTORS AND ADMINISTRATORS****XI. ACCOUNTING AND SETTLEMENT.(Cont'd)**

- (4). Presentation and reservation in lower court of grounds of review.
- (5). Parties.
- (6). Perfection of appeal and effect thereof.
- (7). Record and proceedings not in record.
- (8). Scope of review in general.
- (9). Presumptions.
- (10). Discretion of lower court.
- (11). Questions of fact, and findings.
- (12). Proceedings and determination in appellate court.
- (13). Operation and effect of decision of appellate court.
- 511. Costs and expenses.
  - (1). In general.
  - (2). Allowance to or against contestants.
  - (3). Allowance to or against executor or administrator.
  - (4). Amount.
  - (5). Proceedings for assessment and collection.
- 512. Operation and effect.
- 513. — In general.
  - (1). In general.
  - (2). Ex parte settlements.
  - (3). Collateral attack.
  - (4). Settlements operating as final.
  - (5). Successive administrations.
  - (6). Joint or several settlements by co-executors or coadministrators.
  - (7). Effect as to pending actions.
  - (8). Effect as to jurisdiction of court and status of executor or administrator.
  - (9). Persons and matters concluded in general.
  - (10). Rights and liabilities of legatees and distributees.
  - (11). Rights of creditors.
  - (12). Rights and liabilities of executor or administrator in general.
  - (13). Mismanagement or illegal acts.
  - (14). Mistakes and omissions.
  - (15). Assets unadministered or not accounted for.

**XI. ACCOUNTING AND SETTLEMENT.(Cont'd)**

- 514. — Partial account.
- 515. Private accounting and settlement.
- 516. Actions to open or set aside settlement.
  - (.5). In general.
  - (1). Nature and scope of remedy.
  - (2). Grounds of action.
  - (3). Persons entitled to sue.
  - (4). Jurisdiction.
  - (5). Limitations and laches.
  - (6). Parties, pleading, and evidence.
  - (7). Trial and determination.

**XII. FOREIGN AND ANCILLARY ADMINISTRATION.**

- 517. Foreign appointment.
  - 518. Ancillary appointment.
    - (1). In general.
    - (2). Appointment as dependent on assets or domiciliary appointment.
    - (3). Persons entitled to appointment.
    - (4). Proceedings for appointment.
    - (5). Operation and effect.
    - (6). Discharge and removal.
  - 519. Collection and disposition of assets.
    - (1). In general.
    - (2). Sale, assignment, or pledge of assets.
  - 520. Sales and conveyances under order of court.
  - 521. Presentation and allowance of claims.
  - 522. Payment of claims.
  - 523. Distribution of estate.
  - 524. Actions by foreign executors or administrators.
    - (.5). In general.
    - (1). Rights of action and defenses.
    - (2). Conditions precedent.
    - (3). Proceedings.
  - 525. Actions against foreign executors or administrators.
  - 526. Accounting and settlement.
- XIII. LIABILITIES ON ADMINISTRATION BONDS.**
- 527. Nature and extent in general.
    - (1). In general.
    - (2). Joint, successive, or additional bonds.
  - 528. Property covered.

**162. EXECUTORS AND ADMINISTRATORS****XIII. LIABILITIES ON ADMINISTRATION BONDS.**(Cont'd)

- (1). In general.
  - (2). Property received or converted before execution of bond.
  - (3). Property not assets of estate.
  - (4). Real estate and proceeds thereof.
  - (5). Debts of executor or administrator to estate.
  - (6). Property held in other capacities.
  - 529. Functions and acts covered.
  - 530. Settlement and discharge of principal.
  - 531. Discharge of sureties.
  - 532. Breach or fulfillment of condition.
  - 533. Necessity of accounting and default by principal.
  - 534. Necessity and sufficiency of proceedings for recovery against principal.
  - 535. Conclusiveness of adjudication against principal.
  - 536. Summary remedies.
  - 537. Actions.
    - (5). In general.
    - (1). Nature and form of remedy.
    - (2). Conditions precedent.
    - (3). Defenses, and set-off or counterclaim.
    - (4). Jurisdiction and venue.
    - (5). Time to sue, limitations, and laches.
- See also LIMITATION OF ACTIONS.*
- (6). Persons entitled to enforce liability.
  - (7). Parties and process.
  - (8). Pleading.
  - (9). Evidence.
  - (10). Trial.
  - (11). Amount of recovery.
  - (12). Judgment and review.
  - (13). Costs.

**XIV. EXECUTORS DE SON TORT.**

- 538. Acts which constitute one executor de son tort.
- 539. Operation and effect of unauthorized acts.
- 540. Liabilities to rightful executor or administrator.
- 541. Liabilities to creditors.

**XIV. EXECUTORS DE SON TORT.**(Cont'd)

- 543. Effect of subsequent administration by executor de son tort.
- 544. Actions.

**163. EXEMPTIONS****SUBJECTS INCLUDED**

Exception from liability to seizure and sale, under legal process for payment of debts, of property of debtors, more particularly of personal property

Constitutional and statutory provisions for such exemption

Nature, grounds and extent thereof in general

Who are entitled to benefit of such exemptions, what articles, amount or value are exempt, and against what liabilities exemption is allowed

Waiver or loss of right to exemption

Protection and enforcement of the right

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Decedents' property, exemption from administration and allowances therefrom to widow or family of decedent, see EXECUTORS AND ADMINISTRATORS

Real property, exemption from forced sale as homestead, see HOMESTEAD

Taxation and license fees, exemptions from, see LICENSES, TAXATION

**I. NATURE AND EXTENT,** Ⓒ1-78.

(A) NATURE, CREATION, DURATION, AND EFFECT IN GENERAL, Ⓒ1-13.

(B) PERSONS ENTITLED, Ⓒ14-30.

(C) PROPERTY AND RIGHTS EXEMPT, Ⓒ31-61.

(D) LIABILITIES ENFORCEABLE AGAINST EXEMPT PROPERTY, Ⓒ62-78.

**II. TRANSFER OR INCUMBRANCE OF EXEMPT PROPERTY,** Ⓒ79-88.**III. WAIVER,** Ⓒ89-99.**IV. ESTOPPEL,** Ⓒ100-101.

**163. EXEMPTIONS**V. FORFEITURE,  $\S$  102–104.VI. PROTECTION AND ENFORCEMENT  
OF RIGHTS,  $\S$  105–153.**I. NATURE AND EXTENT.****(A) NATURE, CREATION, DURATION,  
AND EFFECT IN GENERAL.**

1. Nature of right.
2. What law governs.
3. Constitutional and statutory provisions.
4. Construction of exemption laws in general.
5. Retroactive operation.
- 5.1. — In general.
6. — Liabilities and liens existing before exemption law.
7. — Liabilities existing before acquisition of right of exemption.
8. Effect of change or repeal of exemption.
9. Intent in acquisition of property.
10. Nature and extent of right created.
11. Effect of ownership of other property.
12. Exemption of personal property instead of homestead.
13. Duration and termination.

**(B) PERSONS ENTITLED.**

14. Debtors or defendants.
15. Family relation in general.
16. Head of family and members thereof.
17. Householders.
18. Housekeepers.
19. Married women.
20. Children.
21. Unmarried persons.
22. Particular occupations.
23. Persons in military or naval service.
24. Aged or infirm persons.
25. Citizenship.
26. Residence.
- 26.1. — In general.
27. — Domicile in general.
28. — Residing with family.
29. — Absence or removal.
30. Surviving husband, wife, children, or next of kin.

**(C) PROPERTY AND RIGHTS EXEMPT.**

31. General exemptions of personal property.
32. Property within general exemption.
- 32.1. — In general.

**I. NATURE AND EXTENT.(Cont'd)**

33. — Nature in general.
34. — Money.
35. — Rights of action in general.
36. Amount of exemption and value of property.
37. Specific exemptions in general.
39. Food and provisions.
40. Wearing apparel and material therefor.
41. Arms and military equipments.
42. Household goods.
43. Domestic animals and food therefor.
44. Vehicles and teams.
45. Tools and implements of trade.
46. Materials and stock in trade.
47. Professional books and instruments.
48. Earnings, wages, or salaries.
  - (1). In general.
  - (2). What are wages or personal earnings.
  - (3). Wages of mechanics, laborers, and seamen.
49. Pension and retirement funds and accounts.
50. Life, health, and accident insurance.
  - (1). In general.
  - (2). Mutual benefit insurance.
51. Burial lot.
52. Property in lieu of specific exemptions.
53. Proceeds of exempt property.
54. — In general.
55. — Voluntary sale, exchange, or mortgage.
56. — Involuntary conversion.
57. — Proceeds of insurance.
58. — Property purchased with exempt money.
59. Ownership or possession of property in general.
60. Property of tenants in common.
61. Partnership property.

**(D) LIABILITIES ENFORCEABLE AGAINST  
EXEMPT PROPERTY.**

62. Exceptions from exemptions in general.
63. Statutory provisions.
64. Exception of pre-existing liabilities and liens.
65. Purchase price and lien therefor.
66. Liens on property when acquired.

**163. EXEMPTIONS****I. NATURE AND EXTENT.(Cont'd)**

- 67. Liens after acquisition of property.
- 68. Necessaries in general.
- 69. Board and lodging.
- 70. Rent.
- 71. Wages and materials.
- 72. Liabilities incurred in fiduciary capacity.
- 73. Liabilities fraudulently incurred.
- 74. Liabilities for torts.
- 75. Liabilities as surety.
- 76. Judgments.
- 77. Debts to government.
- 78. Proceedings for enforcement of claims.

**II. TRANSFER OR INCUMBRANCE OF EXEMPT PROPERTY.**

- 79. Power to transfer or incumber in general.
- 80. Statutory provisions.
- 81. Sale or exchange.
- 82. Assignment.
- 83. Gift.
- 84. Mortgage.
- 85. Pledge.
- 86. Consent of husband or wife.
- 87. Order of court.
- 88. Rights of purchasers as to exemption.

**III. WAIVER.**

- 89. Power to waive.
- 90. Statutory provisions.
- 91. Persons authorized to waive.
- 92. Contracts waiving prospective exemption.
- 93. Acts or omissions constituting waiver in general.
- 94. Mortgage or pledge as waiver.
- 95. Consent to levy and sale.
- 96. Revocation of waiver.
- 97. Operation and effect of waiver.
- 98. — In general.
- 99. — As to other creditors.

**IV. ESTOPPEL.**

- 100. In general.

**V. FORFEITURE.**

- 102. In general.
- 103. Denial of ownership.
- 104. Fraudulent conveyance or concealment.

**VI. PROTECTION AND ENFORCEMENT OF RIGHTS.**

- 105. Establishment of right of exemption in general.
- 106. Statutory provisions.
- 107. Process or other proceedings as against which exemption may be allowed.
- 108. — In general.
- 109. — Levy of attachment or execution.
- 110. — Garnishment.
- 111. — Proceedings supplementary to execution.
- 112. — Foreclosure proceedings.
- 113. — Set-off and counterclaim.
- 114. Duties of officer making levy.
- 115. Necessity for claim.
- 116. — In general.
- 117. — Property specifically exempted.
- 118. Persons who may make claim.
- 119. Time for making claim.
  - (1). In general.
  - (2). At time of levy or before sale.
- 120. Form and requisites of claim.
- 121. — In general.
- 122. — Affidavit.
- 123. — Inventory or schedule.
- 124. Presentation and filing of claim.
- 125. Appraisement.
- 126. Selection.
- 127. Contest and determination of claim.
- 128. Allotment or setting apart.
- 129. Surrender of other property.
- 130. Successive exemptions.
- 131. Denial or infringement of rights.
- 132. — In general.
- 133. — Levy on or sale of exempt property.
- 134. — Evasion of exemption law.
- 135. Motions and other summary remedies.
- 136. Nature and form of action.
- 137. — In general.
- 138. — Replevin.
- 139. — Actions for damages.
- 140. — Injunction in general.
- 141. — Injunction against proceedings in another state.
- 142. Defenses.
- 143. — In general.

**164T. EXTORTION****VI. PROTECTION AND ENFORCEMENT  
OF RIGHTS.(Cont'd)**

144. — Set-off of debt or judgment of creditor.
145. Jurisdiction.
146. Parties.
147. Pleading.
148. Evidence.
149. Damages or penalty.
150. Trial.
151. Judgment and enforcement thereof.
152. Review.
153. Costs.

**164. EXPLOSIVES****SUBJECTS INCLUDED**

Regulation of manufacturer, dealing in, and use of explosive substances generally

Liabilities for injuries therefrom caused by negligence

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Firearms, use of explosives in, see WEAPONS

Gas, explosion of, see GAS

Malicious injury to property, use of explosives, see MALICIOUS MISCHIEF

Nuisance, use of explosives constituting, see NUISANCE

Steam, explosion of, see STEAM

Transportation of articles dangerous to other goods or to passengers, see CARRIERS, SHIPPING

1. Power to make regulations.
2. Statutory and municipal regulation in general.
3. Regulations of manufacture, storage, and sale.
4. Violations of regulations.
5. Criminal prosecutions.
6. Injuries from accidental explosions.
7. — In general.

8. — Illegal or negligent manufacture, storage, or keeping.
9. — Illegal or negligent sale.
10. — Illegal or negligent use.
11. Injuries from discharge of fireworks.
12. Injuries from blasting.

**164T. EXTORTION****SUBJECTS INCLUDED**

Obtaining or attempting to obtain from another, under color of official or other right, money or other property, more particularly the taking or claiming, by a public officer, of illegal or excessive fees or compensation for official services

Obtaining or attempting to obtain from another, without color of right, money or other property, or the execution, alteration, or destruction of a valuable security or other instrument in writing, by menaces, either in words oral or written, or in acts, of injury to person, property, or rights, or of accusation of crime or other injury to reputation

Levying blackmail

Extortionate extensions of credit

Nature and elements of these crimes

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Bribes, acceptance of, see BRIBERY

Civil liabilities for extortion, see TORTS

Civil liabilities of officers receiving illegal or excessive fees, see PUBLIC EMPLOYMENT

False personation of officer or other person exercising special authority, see FALSE PRETENSES

Robbery by putting in fear, see ROBBERY

Tortious resort to harsh collection methods, see TORTS



**164T. EXTORTION**

1. In general.
2. Statutory provisions.
3. — In general.
4. — Purpose.
5. — Validity.
6. — Retroactive operation.
7. Nature and elements in general.
8. — In general.
9. — Intent; knowledge.
10. — Threat or duress.
11. — Money or property extorted.
12. Official extortion.
13. — In general.
14. — Intent; knowledge.
15. — Color of office or authority.
16. — Threat, duress, or inducement.
17. — Money or property extorted.
18. Federal offenses.
19. — In general.
20. — Intent; knowledge.
21. — Interstate commerce.
22. — Threat or duress.
23. — Money or property extorted.
24. — Official extortion.
  - (1). In general.
  - (2). Intent; knowledge.
  - (3). Interstate commerce.
  - (4). Color of office or authority.
  - (5). Threat, duress, or inducement.
  - (6). Money or property extorted.
25. Loans; credit.
26. Attempts.
27. Defenses.
28. — In general.
29. — Consent or collusion.
30. Parties; aiding and abetting.
31. Indictment or information.
32. — In general.
33. — Requisites and sufficiency.
34. — Issues, proof, and variance.
35. Evidence.
36. — In general.
37. — Admissibility.
38. — Presumptions and burden of proof.
39. — Weight and sufficiency.
  - (1). In general.
  - (2). Federal offenses.
40. Trial.
41. — In general.

42. — Questions of law or fact.
43. — Instructions.
44. Sentence and punishment.

**166. EXTRADITION AND DETAINERS****SUBJECTS INCLUDED**

Delivery, by one country or state to another, of persons charged with the commission of crime within the jurisdiction of such other country or state, either as matter of comity or under provisions of treaties, constitutions or other compacts

Nature and scope of the remedy in general

Constitutional, treaty and statutory provisions relating thereto

In what cases, and as to what persons, and for what offenses extradition is allowed

Jurisdiction over and proceedings to obtain extradition

Issuance, requisites and validity of demands, requisitions, warrants, etc.

Arrest and delivery of persons accused

Their rights and liabilities after extradition

Review of proceedings, and costs and expenses thereof

Detainers lodged against persons imprisoned in one jurisdiction while charged with crime in another, and proceedings to transfer them for trial

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Habeas corpus for release from extradition or detainer, see HABEAS CORPUS

Requirement of, and proceedings for, extradition of Indians and other native peoples of North America, see INDIANS

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- I. EXTRADITION, ¶1–49.
    - (A) INTERNATIONAL, ¶1–20.
    - (B) INTERSTATE, ¶21–49.
  - II. DETAINERS, ¶50–60.

**167. FACTORS****I. EXTRADITION.****(A) INTERNATIONAL.**

1. Nature, grounds, and scope of remedy.
2. Treaties.
3. Statutory provisions.
4. Authority and duty to demand or deliver persons accused.
5. Offenses ground for extradition.
6. Persons subject to extradition.
7. Proceedings for extradition from foreign country.
8. Proceedings for extradition to foreign country.
9. — In general.
10. — Preliminary demand and executive warrant.
11. — Complaint.
12. — Warrant for arrest.
13. — Arrest and bail.
14. — Examination and determination.
  - (1). In general.
  - (2). Evidence.
15. — Commitment for extradition and re-arrest after discharge.
16. — Warrant for delivery.
17. — Review of proceedings.
18. Costs and expenses.
19. Rights and liabilities of accused after extradition.
20. Rights of persons illegally brought within jurisdiction.

**(B) INTERSTATE.**

21. Nature, grounds, and scope of remedy.
22. Constitutional and statutory provisions.
23. Authority and duty to demand or deliver persons accused.
24. — In general.
25. — From or to the territories.
26. — From or to the District of Columbia.
27. Offenses ground for extradition.
28. Persons subject to extradition.
- 28.1. — In general.
29. — Persons charged with crime.
30. — Fugitives from justice.
31. — Persons in custody on charge of other crime.
32. Indictment or affidavit charging offense.

**I. EXTRADITION.(Cont'd)**

34. Requisition and accompanying documents.
35. Application for arrest and proceedings thereon.
36. Warrant for arrest and delivery.
37. Arrest and bail.
38. Agents to receive delivery.
39. Examination, determination, and review of proceedings.
40. Costs and expenses.
41. Rights and liabilities of accused after extradition.
42. Rights of persons illegally brought within jurisdiction.

**II. DETAINERS.**

*For earlier cases, see COURTS ¶¶477, 495, and 514.*

50. In general.
51. Constitutional and statutory provisions; interstate agreement.
52. Nature and operation of detainer in general.
53. Jurisdictions, proceedings, persons, and offenses involved.
- 53.1. — In general.
54. — Fugitives and escapees.
55. Request by receiving state, and proceedings thereon.
56. Review of proceedings; contesting detainer or request.
57. Request by prisoner for final disposition and proceedings thereon.
58. Custody, transfer, and return of prisoner.
59. Time for trial.
60. Effect of delay or failure to prosecute; waiver; determination.

**167. FACTORS****SUBJECTS INCLUDED**

Regulation and conduct of the business of receiving and selling goods consigned or otherwise entrusted to factors, commission merchants, etc. for sale

**167. FACTORS**

Rights, powers, duties and liabilities of persons engaged in such business and the principals or consignors, as between themselves and as to others, arising from such consignments, etc.

Incidental transactions, such as advances, pledges, etc., especially as affected by their possession or control of the goods or of evidences of title

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Agency in general, and on particular occasions only, not in the course of the agent's ordinary business, see **PRINCIPAL AND AGENT**

Brokers not having possession or control of property, sales of goods through, see **BROKERS**

Security provisions in factoring agreements and the like, as governed by the Uniform Commercial Code, see **SECURED TRANSACTIONS**

1. Who are factors.
2. Licenses and taxes.
- 2.5. Statutory bonds.
3. Penalties for violations of regulations.
4. Offenses by factors.
5. Appointment or employment.
6. Duration, termination, or revocation of agency.
7. Duties and liabilities of principal in general.
8. Authority conferred in general.
9. Delegation of authority.
10. Duties to principal in general.
- 10.1. — In general.
11. — Nature of factor's obligation.
12. — Skill and care required.
13. — Instructions of principal.
14. — Information to principal.
15. Control and care of goods.
16. Insurance of goods.
17. Obligation to make advances.
18. Title to goods.
19. Power to pledge.
20. Powers, duties, and liabilities as to sale.
- 20.1. — In general.
21. — Authority and duty in general.
22. — Effect of instructions by principal.
23. — Effect of advances by factor.

24. — Place, time, and manner of sale.
25. — Price.
26. — Credit to buyer.
27. — Collection of price.
28. — Assumption by factor of liability for price.
29. Del credere agency.
30. Guaranty by factor of sale, price, or collection.
31. Duties and liabilities as to proceeds.
32. Keeping and rendering accounts.
33. Failure to sell.
34. Individual interest of factor.
35. Factor acting for parties adversely interested.
36. Insolvency of factor.
37. Fraud of factor.
38. Conversion by factor.
39. Repudiation or ratification of acts of factor.
40. Liabilities of factor representing several principals.
41. Liabilities of factor to true owner other than principal.
42. Actions for proceeds of goods or for accounting.
43. Actions for negligence or wrongful acts of factor.
44. Commission or other compensation for services.
45. Reimbursement of advances, expenses, or losses.
46. Actions for compensation.
47. Lien.
  - (.5). In general.
  - (1). Nature.
  - (2). Existence and extent in general.
  - (3). Possession.
  - (4). Priorities.
  - (5). Waiver, loss, or discharge.
  - (6). Preservation and enforcement.
48. Rights, powers, and liabilities as to third persons.
- 48.1. — In general.
49. — Representation of principal in general.
50. — Loss of or injury to goods.
51. — Contracts in general.
52. — Pledge of goods.
53. — Sale of goods.

**168. FALSE IMPRISONMENT**

- 54. — Warranties.
- 55. — Proceeds of goods.
- 56. — Unauthorized and wrongful acts of factor.
- 57. — Repudiation or ratification of acts of factor.
- 58. Protection, under factors' acts, of persons dealing with factor.
- 59. — In general.
- 60. — Factors or agents within statutes.
- 61. — Possession of goods or of evidence of title.
- 62. — Pledges.
- 63. — Purchasers.
- 64. Right of principal to follow goods or proceeds thereof.
- 65. Rights of creditors of principal and factor.
- 66. Actions by or against principals or factors.

**168. FALSE IMPRISONMENT****SUBJECTS INCLUDED**

Restraint of the person of another, without sufficient authority, not merely incident to a malicious prosecution

Justification or excuse for such restraint

Liabilities and remedies therefor, civil or criminal

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Arrest, right to make, see **ARREST**

Governmental units' liability for false imprisonment or wrongful conviction, see **MUNICIPAL CORPORATIONS, STATES**

Habeas corpus for release from improper imprisonment, see **HABEAS CORPUS**

**I. CIVIL LIABILITY, ¶1–42.****(A) ACTS CONSTITUTING FALSE IMPRISONMENT AND LIABILITY THEREFOR, ¶1–15.****(B) ACTIONS, ¶16–42.****II. CRIMINAL RESPONSIBILITY, ¶43–44.****I. CIVIL LIABILITY.****(A) ACTS CONSTITUTING FALSE IMPRISONMENT AND LIABILITY THEREFOR.**

- 1. Nature and elements of false imprisonment.
- 2. — In general.
- 2.1. — What law governs.
- 2.5. — Preemption.
- 3. — False imprisonment and malicious prosecution distinguished.
- 4. — Intent and malice.
- 5. — Act or means of arrest or detention.
- 6. — Extent of restraint.
- 7. — Illegality of arrest.
  - (1). In general.
  - (2). Liability of judicial officers.
  - (3). Liability of officer or other person making arrest and persons assisting officer.
  - (4). Liability of person instigating arrest.
  - (5). Effect of subsequent adjudications.
  - (6). Waiver of defects or objections.
- 8. — Illegality of detention after arrest.
- 9. Defenses.
- 10. — In general.
- 11. — Exercise of authority or duty.
- 12. — Judicial process.
- 13. — Probable cause.
- 14. — Advice of counsel.
- 15. Persons liable.
  - (1). In general.
  - (2). Persons procuring or instigating arrest.
  - (3). Liability of principal for acts of agent.

**(B) ACTIONS.**

- 16. Nature and form of remedy.
- 17. Jurisdiction and venue.
- 18. Time to sue and limitations.  
*See also LIMITATION OF ACTIONS.*
- 19. Parties.
- 20. Pleading.
  - (.5). In general.
  - (1). Declaration, complaint, or petition.
  - (2). Plea or answer.
  - (3). Issues, proof, and variance.

**168. FALSE IMPRISONMENT****I. CIVIL LIABILITY.**(Cont'd)

- 21. Evidence.
- 21.1. — In general.
- 22. — Presumptions and burden of proof.
- 23. — Admissibility in general.
- 24. — Intent and malice.
- 25. — Character and condition of parties.
- 26. — Justification.
- 27. — Nature and circumstances of act.
- 28. — Extent of injury.
- 29. — Aggravation of damages.
- 30. — Mitigation of damages.
- 31. — Weight and sufficiency.
- 32. Damages.
- 32.1. — In general.
- 33. — Measure in general.
- 34. — Elements of compensation.
- 35. — Exemplary.
- 36. — Amount awarded.
- 37. Trial.
- 38. — In general.
- 39. — Questions for jury.
- 40. — Instructions.
- 41. — Verdict and findings.
- 42. Judgment and review.

**II. CRIMINAL RESPONSIBILITY.**

- 43. Offenses.
- 44. Prosecution and punishment.

**170. FALSE PRETENSES****SUBJECTS INCLUDED**

- Fraudulently obtaining or attempting to obtain from another personal property, or the making or endorsement by another of a negotiable instrument, or the execution of any instrument in writing, or any benefit or advantage, by false tokens or representations
- Deception or theft by assuming and acting in the character of another person; or by assuming to be a public officer or person having special authority or privilege, and acting in such assumed capacity; or by

appropriating or misusing another person's identification information, particularly in connection with credit cards and similar access devices

Nature and elements of offenses concerning such conduct, including—

False pretenses

Larceny or theft by fraud or deception

Larceny by trick or device

Cheating

Swindling

Passing bad checks

Writing a check on an account with insufficient funds

False personation

False claims of military honors

Credit card theft or fraud

Access device theft or fraud

Identity theft or fraud

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Bank fraud, see FINANCE, BANKING, AND CREDIT ≈1715

Civil liability, see CONVERSION AND CIVIL THEFT, FRAUD, REPLEVIN, and other topics

Computer fraud, see FRAUD

Counterfeiting, see COUNTERFEITING

Failing to disclose, concealing, or misrepresenting the encumbered state of property, see FRAUDULENT CONVEYANCES

False claims against government, see STATES and UNITED STATES

False credit applications, see FINANCE, BANKING, AND CREDIT ≈1716

False identification documents, see FORGERY

False representation of citizenship, and false statements in application and use of passport, see ALIENS, IMMIGRATION, AND CITIZENSHIP

False representation of Social Security number, see SOCIAL SECURITY

False statements to government, see FRAUD

**170. FALSE PRETENSES**

False statements to law enforcement officer or investigators, see OBSTRUCTING JUSTICE

Forgery, see FORGERY

Fraud generally, see FRAUD

Fraudulent appropriation of property by one entrusted with possession, see EMBEZZLEMENT

Giving false name to law enforcement officers, see OBSTRUCTING JUSTICE

Mail fraud, see POSTAL SERVICE

Medicare or Medicaid fraud, see HEALTH

Theft or larceny generally, see LARCENY

Wire fraud, see TELECOMMUNICATIONS

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**I. IN GENERAL,** ⅈ101–150.

**II. CHECKS AND OTHER FALSE TOKENS,** ⅈ151–180.

**III. FALSE PERSONATION,** ⅈ181–200.

**IV. MILITARY PERSONNEL OR HONORS; STOLEN VALOR,** ⅈ201–210.

**V. CREDIT CARDS AND OTHER ACCESS DEVICES; IDENTITY THEFT OR FRAUD,** ⅈ211–250.

**VI. PROSECUTION,** ⅈ251–330.

(A) **IN GENERAL,** ⅈ251–260.

(B) **INDICTMENT, INFORMATION, OR COMPLAINT,** ⅈ261–280.

(C) **EVIDENCE,** ⅈ281–310.

(D) **TRIAL,** ⅈ311–330.

**VII. SENTENCE AND PUNISHMENT,** ⅈ331–337.

**I. IN GENERAL.**

101. In general.

102. Statutory provisions.

103. — In general.

104. — Purpose and construction in general.

105. — Validity.

*See also CONSTITUTIONAL LAW.*

(1). In general.

(2). Checks and other false tokens.

(3). False personation.

(4). — In general.

(5). — Public employees and officials.

(6). Military personnel or honors; stolen valor.

**I. IN GENERAL.**(Cont'd)

(7). Credit cards and other access devices; identity theft or fraud.

106. — Retroactive operation.

*Ex post facto laws, see also CONSTITUTIONAL LAW XXIII(B). Validity of retroactive statutes, see also STATUTES ⅈ1580.*

107. Federal preemption.

*See also STATES I(B).*

108. Nature and elements of offenses in general.

109. — In general.

110. — Theft by deception, fraud, or misrepresentation.

111. — Theft by swindle, cheat, trick, or device.

112. Degrees and aggravated offenses in general.

113. Relation to other offenses.

114. Nature of pretense or representation.

115. — In general.

116. — Conduct.

117. — Omissions.

118. — Facts or opinions.

119. — Past or existing facts or future facts; promises.

120. Particular cases and contexts.

121. — In general.

122. — Procuring written instrument or signature.

123. — Contracts and services.

124. — Real property; construction fraud.

125. — Insurance.

126. — Finance and banking.

127. — Games and contests.

128. — Gifts and charitable contributions.

129. — Interstate transportation of persons; travel fraud.

130. — Public money, property, services, or benefits.

131. Intent.

132. Consent; authorization.

133. Falsity of pretense or representation.

134. — In general.

135. — Knowledge of falsity.

136. Reliance on pretense or representation.

137. Persons who may rely on representations.

138. Property or benefit obtained.

139. — In general.

140. — Value; amount.

**170. FALSE PRETENSES****I. IN GENERAL.**(Cont'd)

- 141. Injury or loss.
- 142. Possession or title.
- 143. Attempts.
- 144. Defenses.  
*Consent, see ¶132.*
- 145. Parties to offenses; persons liable.

**II. CHECKS AND OTHER FALSE TOKENS.***Possession of forged check, see FORGERY.*

- 151. In general.
- 152. Degrees and aggravated offenses in general.
- 153. Relation to other offenses.
- 154. Intent; knowledge.
- 155. What constitutes check or other false token.
- 156. Issuance of check or other false token.
- 157. — In general.
- 158. — Postdating.
- 159. Insufficient funds.
- 160. Property or benefit obtained.
- 161. — In general.
- 162. — Pre-existing debt.
- 163. — Value; amount.
- 164. Injury or loss.
- 165. Notice and demand for payment.
- 166. Attempts.
- 167. Defenses.
- 168. — In general.
- 169. — Payee's knowledge of insufficient funds.
- 170. — Tender of payment.
- 171. Parties to offenses; persons liable.

**III. FALSE PERSONATION.**

- 181. In general.
- 182. Degrees and aggravated offenses in general.
- 183. Relation to other offenses.
- 184. Necessity and nature of impersonation.
- 185. — In general.
- 186. — Actual or fictitious person; deceased persons.
- 187. — Natural or artificial person; corporations and business organizations.
- 188. Public employees and officials.
- 189. — In general.
- 190. — Law enforcement personnel.
- 191. Intent; knowledge.

**III. FALSE PERSONATION.**(Cont'd)

- 192. Consent; authorization.
- 193. Property or benefit obtained.
- 194. — In general.
- 195. — Value; amount.
- 196. Injury or loss.
- 197. Attempts.
- 198. Defenses.  
*Consent, see ¶192.*
- 199. Parties to offenses; persons liable.

**IV. MILITARY PERSONNEL OR HONORS;  
STOLEN VALOR.**

- 201. In general.
- 202. Degrees and aggravated offenses in general.
- 203. Relation to other offenses.
- 204. Intent; knowledge.
- 205. Attempts.
- 206. Defenses.
- 207. Parties to offenses; persons liable.

**V. CREDIT CARDS AND OTHER ACCESS  
DEVICES; IDENTITY THEFT OR  
FRAUD.**

- 211. In general.
- 212. Degrees and aggravated offenses in general.
- 213. Relation to other offenses.
- 214. Necessity and nature of impersonation.
- 215. — In general.
- 216. — Actual or fictitious person; deceased persons.
- 217. — Natural or artificial person; corporations and business organizations.
- 218. Nature of identifying information.
- 219. Nature of card or other access device.
- 220. — In general.
- 221. — Device-making equipment.
- 222. — Scanning, skimming, or reencoding device.
- 223. Obtaining of information or device.
- 224. Production of information or device.
- 225. Possession of information or device.
- 226. — In general.
- 227. — Constructive possession.
- 228. Use of information or device.
- 229. Transfer of or trafficking in information or device.
- 230. Intent; knowledge.

**170. FALSE PRETENSES****V. CREDIT CARDS AND OTHER ACCESS DEVICES; IDENTITY THEFT OR FRAUD.(Cont'd)**

- 231. Consent; authorization.
- 232. Property or benefit obtained.
- 233. — In general.
- 234. — Value; amount.
- 235. Injury or loss.
- 236. Foreign or interstate commerce.  
*See also COMMERCE.*
- 237. Number of devices or victims.
- 238. Attempts.
- 239. Defenses.  
*Consent, see* [§ 231](#).
- 240. Parties to offenses; persons liable.

**VI. PROSECUTION.****(A) IN GENERAL.**

- 251. In general.

**(B) INDICTMENT, INFORMATION, OR COMPLAINT.**

*See also INDICTMENTS AND CHARGING INSTRUMENTS.*

- 261. In general.
- 262. Requisites and sufficiency in general.
- 263. — In general.
- 264. — Nature of pretense or representation.
- 265. — Falsity of pretense or statement.
- 266. — Reliance on pretense or representation.
- 267. — Checks and other false tokens.
- 268. — False personation.
  - (1). In general.
  - (2). Public employees and officials.
- 269. — Military personnel or honors; stolen valor.
- 270. — Credit cards and other access devices; identity theft or fraud.
- 271. Intent; knowledge.
- 272. Property or benefit obtained; injury.
- 273. Attempts.
- 274. Variance between allegations and proof.
- 275. — In general.
- 276. — Checks and other false tokens.
- 277. — False personation.
  - (1). In general.
  - (2). Public employees and officials.
- 278. — Military personnel or honors; stolen valor.

**VI. PROSECUTION.(Cont'd)**

- 279. — Credit cards and other access devices; identity theft or fraud.

**(C) EVIDENCE.**

*See also CRIMINAL LAW XVII.*

- 281. In general.
- 282. Presumptions, inferences, and burden of proof.
- 283. — In general.
- 284. — Checks and other false tokens.
- 285. — False personation.
  - (1). In general.
  - (2). Public employees and officials.
- 286. — Military personnel or honors; stolen valor.
- 287. — Credit cards and other access devices; identity theft or fraud.
- 288. Admissibility.
- 289. — In general.
- 290. — Checks and other false tokens.
- 291. — False personation.
  - (1). In general.
  - (2). Public employees and officials.
- 292. — Military personnel or honors; stolen valor.
- 293. — Credit cards and other access devices; identity theft or fraud.
- 294. Weight and sufficiency.
- 295. — In general.
- 296. — Nature of pretense or representation.
- 297. — Falsity of pretense or statement.
- 298. — Reliance on pretense or representation.
- 299. — Checks and other false tokens.
- 300. — False personation.
  - (1). In general.
  - (2). Public employees and officials.
- 301. — Military personnel or honors; stolen valor.
- 302. — Credit cards and other access devices; identity theft or fraud.
  - (1). In general.
  - (2). Necessity and nature of impersonation.
  - (3). Nature of identifying information.
  - (4). Nature of card or other access device.



**170. FALSE PRETENSES****VI. PROSECUTION.**(Cont'd)

- (5). Obtaining of information or device.
- (6). Production of information or device.
- (7). Possession of information or device.
- (8). Use of information or device.
- (9). Transfer of or trafficking in information or device.
- 303. — Intent; knowledge.
- 304. — Consent; authorization.
- 305. — Property or benefit obtained.
- 306. — Injury or loss.
- 307. — Number of devices or victims.
- 308. — Attempts.
- 309. — Parties to offenses.

**(D) TRIAL.**

*See also CRIMINAL LAW XX.*

- 311. In general.
- 312. Questions of law or fact.
- 313. — In general.
- 314. — Checks and other false tokens.
- 315. — False personation.
  - (1). In general.
  - (2). Public employees and officials.
- 316. — Military personnel or honors; stolen valor.
- 317. — Credit cards and other access devices; identity theft or fraud.
- 318. Instructions.
- 319. — In general.
- 320. — Checks and other false tokens.
- 321. — False personation.
  - (1). In general.
  - (2). Public employees and officials.
- 322. — Military personnel or honors; stolen valor.
- 323. — Credit cards and other access devices; identity theft or fraud.

**VII. SENTENCE AND PUNISHMENT.**

*See also SENTENCING AND PUNISHMENT.*

- 331. In general.
- 332. Checks and other false tokens.
- 333. False personation.
- 334. — In general.
- 335. — Public employees and officials.

**VII. SENTENCE AND PUNISHMENT.**(Cont'd)

- 336. Military personnel or honors; stolen valor.
- 337. Credit cards and other access devices; identity theft or fraud.

**170A. FEDERAL CIVIL PROCEDURE****SUBJECTS INCLUDED**

Generally, the civil procedure, other than appellate, of the District Courts of the United States and the former Circuit Courts of the United States

More particularly, procedure under the Federal Rules of Civil Procedure

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Appearance, see APPEARANCE

Appellate procedure, see FEDERAL COURTS

Attachment, see CREDITORS' REMEDIES

Criminal procedure, see CRIMINAL LAW

District of Columbia, procedure in municipal court, see DISTRICT OF COLUMBIA

Execution, see CREDITORS' REMEDIES

Federal jurisdiction, procedure in, see ADMIRALTY, BANKRUPTCY, FEDERAL COURTS, INTERNAL REVENUE, PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY, and other specific topics

Garnishment, see CREDITORS' REMEDIES

Privileged communications and confidential relations, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

Process, see PROCESS

**I. IN GENERAL,** ⌘1–100.

(A) IN GENERAL, ⌘1–20.

(B) RULES OF COURT IN GENERAL, ⌘21–50.

1. IN GENERAL, ⌘21–30.

2. RULES OF CIVIL PROCEDURE, ⌘31–50.

## 170A. FEDERAL CIVIL PROCEDURE

## I. IN GENERAL—Cont'd

(D) NATURE AND FORM OF REMEDY, ⚭71–80.

(E) JOINDER OF CLAIMS AND REMEDIES, ⚭81–100.

## II. PARTIES, ⚭101–400.

(A) IN GENERAL, ⚭101–110.

(B) CAPACITY, ⚭111–130.

(C) REAL PARTIES IN INTEREST, ⚭131–160.

(D) CLASS ACTIONS, ⚭161–200.

1. IN GENERAL, ⚭161–170.

2. PROCEEDINGS, ⚭171–180.

3. PARTICULAR CLASSES REPRESENTED, ⚭181–200.

(E) NECESSARY JOINDER, ⚭201–240.

1. IN GENERAL, ⚭201–210.

2. PARTICULAR, NECESSARY OR INDISPENSABLE PARTIES, ⚭211–240.

(F) PERMISSIVE JOINDER, ⚭241–280.

1. IN GENERAL, ⚭241–250.

2. PARTICULAR PARTIES WHO MAY BE JOINED, ⚭251–280.

(G) BRINGING IN NEW PARTIES; THIRD-PARTY PROCEEDINGS, ⚭281–310.

(H) INTERVENTION, ⚭311–350.

1. IN GENERAL, ⚭311–330.

2. PARTICULAR INTERVENORS, ⚭331–350.

(I) SUBSTITUTION, ⚭351–380.

(J) DEFECTS, OBJECTIONS AND AMENDMENTS, ⚭381–400.

## VI. MOTIONS AND ORDERS, ⚭611.1–620.

(A) MOTIONS IN GENERAL, ⚭611.1–611.18.

(B) ORDERS, ⚭612.1–612.7.

(C) RECONSIDERATION, ⚭613.1–613.20.

(D) MOTIONS IN LIMINE, ⚭614–620.

## VII. PLEADINGS, ⚭621–1160.

(A) PLEADINGS IN GENERAL, ⚭621–670.

(B) COMPLAINT, ⚭671–730.

(C) ANSWER, ⚭731–800.

1. IN GENERAL, ⚭731–750.

2. AFFIRMATIVE DEFENSE OR AVOIDANCE, ⚭751–770.

3. SET-OFFS, COUNTERCLAIMS AND CROSS-CLAIMS, ⚭771–800.

(D) REPLY AND SUBSEQUENT PLEADINGS, ⚭801–820.

(E) AMENDMENTS, ⚭821–860.

(F) SUPPLEMENTAL PLEADINGS, ⚭861–880.

## VII. PLEADINGS—Cont'd

(G) ISSUES, PROOF AND VARIANCE, ⚭881–900.

(H) DEFECTS IN AND OBJECTIONS TO PLEADINGS IN GENERAL, ⚭901–920.

(J) BILL OF PARTICULARS; MORE DEFINITE STATEMENT, ⚭941–1030.

1. IN GENERAL, ⚭941–970.

2. PARTICULAR CASES, ⚭971–1030.

(L) JUDGMENT ON THE PLEADINGS, ⚭1041–1080.

1. IN GENERAL, ⚭1041–1060.

2. PARTICULAR CASES, ⚭1061–1080.

(N) STRIKING PLEADING OR MATTER THEREIN, ⚭1101–1160.

## X. DEPOSITIONS AND DISCOVERY, ⚭1261–1690.

(A) IN GENERAL, ⚭1261–1290.

(B) PERPETUATING TESTIMONY BEFORE ACTION OR PENDING APPEAL, ⚭1291–1310.

(C) DEPOSITIONS OF PARTIES AND OTHERS PENDING ACTION, ⚭1311–1470.

1. IN GENERAL, ⚭1311–1340.

2. PROCEEDINGS, ⚭1341–1380.

3. EXAMINATION IN GENERAL, ⚭1381–1400.

4. SCOPE OF EXAMINATION, ⚭1401–1430.

5. SUPPRESSION; USE AND EFFECT, ⚭1431–1450.

6. FAILURE TO APPEAR OR TESTIFY; SANCTIONS, ⚭1451–1470.

(D) WRITTEN INTERROGATORIES TO PARTIES, ⚭1471–1550.

1. IN GENERAL, ⚭1471–1500.

2. SCOPE, ⚭1501–1530.

3. ANSWERS; FAILURE TO ANSWER, ⚭1531–1550.

(E) DISCOVERY AND PRODUCTION OF DOCUMENTS AND OTHER TANGIBLE THINGS, ⚭1551–1650.

1. IN GENERAL, ⚭1551–1570.

2. SUBJECT MATTER IN GENERAL, ⚭1571–1580.

3. PARTICULAR SUBJECT MATTERS, ⚭1581–1610.

4. PROCEEDINGS, ⚭1611–1630.

5. COMPLIANCE; FAILURE TO COMPLY, ⚭1631–1650.

**170A. FEDERAL CIVIL PROCEDURE****X. DEPOSITIONS AND DISCOVERY**  
—Cont'd

(F) PHYSICAL OR MENTAL EXAMINATION OF PERSON,  
⌋1651–1670.

(G) ADMISSIONS ON REQUEST,  
⌋1671–1690.

**XI. DISMISSAL, ⌋1691–1850.**

(A) VOLUNTARY DISMISSAL,  
⌋1691–1720.

(B) INVOLUNTARY DISMISSAL,  
⌋1721–1850.

1. IN GENERAL, ⌋1721–1740.

2. GROUNDS IN GENERAL,  
⌋1741–1770.

3. PLEADING, DEFECTS IN, IN  
GENERAL, ⌋1771–1780.

4. PARTICULAR ACTIONS, INSUF-  
FICIENCY OF PLEADINGS IN,  
⌋1781–1820.

5. PROCEEDINGS, ⌋1821–1850.

**XII. CONTINUANCE, ⌋1851–1870.****XIII. REFERENCE, ⌋1871–1920.****XIV. PRE-TRIAL CONFERENCE,**  
⌋1921–1950.**XV. TRIAL, ⌋1951.1–2310.**

(A) IN GENERAL, ⌋1951.1–1990.

(B) TIME FOR TRIAL; DOCKETS,  
LISTS AND CALENDARS,  
⌋1991–2010.

(C) RECEPTION OF EVIDENCE,  
⌋2011–2110.

(F) TAKING CASE OR QUESTION  
FROM JURY; PREVERDICT  
MOTION FOR JUDGMENT AS  
MATTER OF LAW, ⌋2111–2170.

1. IN GENERAL, ⌋2111–2140.

2. QUESTIONS FOR JURY,  
⌋2141–2170.

(G) INSTRUCTIONS, ⌋2171–2190.

(H) GENERAL VERDICT, ⌋2191–2210.

(I) INTERROGATORIES ACCOMPANYING  
FORMS FOR GENERAL  
VERDICT, ⌋2211–2230.

(J) SPECIAL VERDICT, ⌋2231–2250.

(K) TRIAL BY COURT, ⌋2251–2310.

1. IN GENERAL, ⌋2251–2260.

2. FINDINGS AND CONCLUSIONS,  
⌋2261–2310.

**XVI. NEW TRIAL, ⌋2311–2390.**

(A) IN GENERAL, ⌋2311–2330.

(B) GROUNDS, ⌋2331–2360.

(C) PROCEEDINGS, ⌋2361–2390.

**XVII. JUDGMENT, ⌋2391–2677.**

(A) IN GENERAL, ⌋2391–2410.

(B) BY DEFAULT, ⌋2411–2460.

**XVII. JUDGMENT—Cont'd**

(B) BY DEFAULT—Cont'd

1. IN GENERAL, ⌋2411–2440.

2. SETTING ASIDE, ⌋2441–2460.

(C) SUMMARY JUDGMENT,  
⌋2461–2570.

1. IN GENERAL, ⌋2461–2480.

2. PARTICULAR CASES,  
⌋2481–2530.

3. PROCEEDINGS, ⌋2531–2570.

(D) ON TRIAL OF ISSUES,  
⌋2571–2600.

(E) NOTWITHSTANDING VERDICT;  
JUDGMENT AS MATTER OF  
LAW, ⌋2601–2620.

(F) ENTRY, RECORD AND DOCKET-  
ING, ⌋2621–2640.

(G) RELIEF FROM JUDGMENT,  
⌋2641–2670.

(H) LIEN, ⌋2671–2677.

**I. IN GENERAL.****(A) IN GENERAL.**

1. In general.
2. Power of Congress.
3. Constitutional and statutory provisions.
4. Commencement of actions.
5. Defenses.
- 5.1. — In general.
6. — Equitable defenses.
7. — Hearing before trial.
8. Consolidation of actions.

**(B) RULES OF COURT IN GENERAL.****1. IN GENERAL.**

21. In general.
22. Admiralty rules.
23. Criminal rules.
24. Equity rules.
25. Local rules of District Courts.

**2. RULES OF CIVIL PROCEDURE.**

31. In general.
32. Power of Supreme Court.
33. Validity.
34. Purpose.
35. Construction and operation in general.
36. Liberal or strict construction.
37. Rules as having effect of statutes.
38. Construction of Rules together.
39. Substantive rights, effect of Rules on.

**170A. FEDERAL CIVIL PROCEDURE****I. IN GENERAL.**(Cont'd)

- 40. Jurisdiction and venue, effect of Rules on.
- 41. Federal statutes superseded.
- 42. State statutes and Rules superseded.
- 43. United States, application of Rules to.
- 44. Retroactive operation of Rules.

**(D) NATURE AND FORM OF REMEDY.**

- 71. In general.
- 72. Legal or equitable nature.
- 72.1. — In general.
- 73. — Abolition of distinction between law and equity.

**(E) JOINDER OF CLAIMS AND REMEDIES.**

- 81. In general.
- 82. Grounds of claims.
- 82.1. — In general.
- 83. — Tort and contract claims.
- 84. Nature of remedies sought.
- 84.1. — In general.
- 85. — Legal and equitable remedies.
- 86. Parties involved.
- 87. Severance of claims.

**II. PARTIES.****(A) IN GENERAL.**

- 101. In general.
- 101.5. Identification of parties; fictitious names.
  - (1). In general.
  - (2). Plaintiffs or intervenors.
  - (3). Defendants.
- 101.7. Alignment of parties.
- 102. Formal and nominal parties.
- 103. Proper parties in general.
 

*Excludes issues classifiable to particular topics, including constitutional issues, see CONSTITUTIONAL LAW VI(A), and declaratory judgment actions, see DECLARATORY JUDGMENT ¶¶292, 299 et seq.*
- 103.1. Standing in general.
- 103.2. — In general; injury or interest.
- 103.3. — Causation; redressability.
- 103.4. — Rights of third parties or public.
- 103.5. — Pleading.

**(B) CAPACITY.**

- 111. In general.

**(C) REAL PARTIES IN INTEREST.**

- 131. In general.
- 132. Assignors and assignees.
- 133. Contractors for benefit of others.
- 134. Contract beneficiaries.
- 135. Corporations and business organizations.
- 136. Creditors.
- 137. Employers, employees and labor unions.
- 138. Executors and administrators.
- 139. Governmental bodies and officers thereof.
- 140. Guardians and wards.
- 141. Heirs and testamentary beneficiaries.
- 142. Insurers and insureds.
- 143. Lessors and lessees.
- 144. Mortgagors and mortgagees.
- 145. Partners and partnerships.
- 146. Receivers.
- 147. Representative plaintiffs in general.
- 148. Transferors and transferees.
- 149. Trustees and trust beneficiaries.

**(D) CLASS ACTIONS.****1. IN GENERAL.**

- 161. In general.
 

*See also ¶¶161.1, 161.2, 164.5, 165, 171–180, below.*
- 161.1. Factors, grounds, objections, and considerations in general.
- 161.2. Superiority, manageability, and need in general.
- 162. Discretion of court.
- 163. Impracticability of joining all members of class; numerosity.
- 164. Representation of class; typicality; standing in general.
- 164.5. Effect of mootness.
- 165. Common interest in subject matter, questions and relief; damages issues.
- 166. Hybrid and spurious actions.

**2. PROCEEDINGS.**

- 171. In general; certification in general.
 

*Excludes grounds for and objections to allowance or certification; see ¶¶161.1 et seq., above; see also ¶161, above.*
- 172. Evidence; pleadings and supplementary material.
- 173. Hearing and determination; decertification; effect.
- 174. Consideration of merits.

**170A. FEDERAL CIVIL PROCEDURE****II. PARTIES.(Cont'd)**

- 175. Time for proceeding and determination.
- 176. Identification of class; subclasses.
- 177. Notice and communications.
- 177.1. — In general.
- 178. — Parties responsible; expense.
- 179. — Sufficiency.
- 180. Options; withdrawal.

**3. PARTICULAR CLASSES REPRESENTED.**

- 181. In general.
- 181.5. Antitrust plaintiffs.
- 182. Bondholders.
- 182.5. Consumers, purchasers, borrowers, and debtors.
- 183. Creditors.
- 184. Employees.
- 184.5. — In general.
- 184.10. — Discrimination and civil rights actions in general.
- 184.15. — Sex discrimination actions.
- 184.20. — Age discrimination actions.
- 184.25. — Prior administrative proceeding, use or availability; limitations.
- 184.30. — Public agency actions.
- 185. Heirs and testamentary beneficiaries.
- 185.5. Indians.
- 186. Landowners.
- 186.5. Members of corporations, associations, or unions.
- 186.10. Prisoners and inmates.
- 186.15. Racial, religious, or ethnic groups in general.
- 187. Stockholders, investors, and depositors.  
*See also CORPORATIONS AND BUSINESS ORGANIZATIONS* ¶1907-1943, VIII.
- 187.5. Students, parents, and faculty.
- 188. Trust beneficiaries.
- 189. Welfare and social security claimants.

**(E) NECESSARY JOINDER.****1. IN GENERAL.**

- 201. In general.
- 202. Who are necessary parties.
- 203. Who are indispensable parties.

**2. PARTICULAR, NECESSARY OR INDISPENSABLE PARTIES.**

- 211. In general.
- 212. Assignors and assignees.

**II. PARTIES.(Cont'd)**

- 213. Automobile owners, drivers and occupants.
- 214. Contracting parties, subcontractors, and sureties and guarantors thereof.
- 215. Corporations and business organizations.
- 216. Creditors.
- 217. Employers, employees and labor unions.
- 218. Executors and administrators.
- 219. Governmental bodies and officers thereof.
- 220. Guardians and wards.
- 221. Heirs and testamentary beneficiaries.
- 221.5. Indians.
- 222. Insurers and insureds.
- 223. Joint obligors and joint obligees in general.
- 224. Landowners and land claimants.
- 225. Lessors and lessees.
- 226. Mortgagors and mortgagees.
- 227. Partners and partnerships.
- 228. Pledgors and pledgees.
- 229. Principals and agents.
- 230. Principals and sureties.
- 231. Receivers.
- 232. Transferors and transferees.
- 233. Trustees and trust beneficiaries.

**(F) PERMISSIVE JOINDER.****1. IN GENERAL.**

- 241. In general.
- 242. Common question of law or fact.

**2. PARTICULAR PARTIES WHO MAY BE JOINED.**

- 251. In general.
- 252. Automobile owners, drivers and occupants.
- 253. Contractors and subcontractors and sureties thereof.
- 254. Corporations and business organizations.
- 255. Creditors.
- 256. Employers, employees and labor unions.
- 257. Executors, administrators, heirs and testamentary beneficiaries.
- 258. Governmental bodies and officers thereof.
- 259. Insurers and insureds.
- 260. Landowners and land claimants.
- 261. Lessors and lessees.

**170A. FEDERAL CIVIL PROCEDURE****II. PARTIES.(Cont'd)**

- 262. Mortgagors and mortgagees.
- 263. Negotiable instruments, parties to.
- 264. Partners and partnerships.
- 265. Principals and agents.
- 265.5. Prisoners and inmates.
- 266. Tort-feasors in general.
- 267. Trustees and trust beneficiaries.

**(G) BRINGING IN NEW PARTIES; THIRD-PARTY PROCEEDINGS.**

- 281. In general.
- 282. Nature and purpose.
- 283. Discretion of court.
- 284. Option of plaintiff.
- 284.1. — In general.
- 285. — Release of third party by plaintiff.
- 286. Grounds of proceedings in general.
- 287. Liability of third party in general.
- 288. Contract claim against third party in general.
- 289. Insurer as third party.
- 290. Surety as third party.
- 291. Tort-feasor as third party.
- 292. Time for bringing in third party.
- 293. Proceedings.
- 293.1. — In general.
- 294. — Third-party complaint.
- 295. — Process and notice.
- 296. — Proceedings after third party brought in, in general.
- 297. — Amendment of original complaint.

**(H) INTERVENTION.****1. IN GENERAL.**

- 311. In general.
- 312. Nature and purpose.
- 313. Discretion of court.
- 314. Grounds and factors.
- 314.1. — In general.
- 315. — Interest of applicant in general.
- 316. — Inadequacy of representation of applicant's interest.
- 317. — Binding effect of principal action on applicant.
- 318. — Subordination to principal action in general.
- 319. — Common question of law or fact.
- 320. Time for intervention.

**II. PARTIES.(Cont'd)**

- 321. Proceedings for intervention.
- 322. Effect of intervention or denial of application therefor.
- 323. Effect of dismissal of original parties.

**2. PARTICULAR INTERVENORS.**

- 331. In general.
- 332. Assignees and transferees.
- 333. Bondholders.
- 334. Contractors and subcontractors.
- 335. Corporations and business organizations.
- 336. Creditors.
- 337. Employers, employees and labor unions.
- 337.5. Environmental law.
- 338. Governmental bodies and officers thereof.
- 339. Heirs and testamentary beneficiaries.
- 339.5. Indians.
- 340. Insurers and insureds.
- 341. Landowners and land claimants.
- 341.3. Lessors and lessees.
- 341.5. Prisoners and inmates.
- 342. Property or lien interest in general.
- 343. Receivers.
- 344. Taxpayers.
- 345. Trustees and trust beneficiaries.

**(I) SUBSTITUTION.**

- 351. In general.
- 352. Grounds.
- 352.1. — In general.
- 353. — Death in general.
- 354. — Death of plaintiff in general.
- 355. — Death of coplaintiff.
- 356. — Death of defendant in general.
- 357. — Death of codefendant.
- 358. — Incompetency.
- 359. — Transfer of interest in general.
- 360. — Dissolution or reorganization of corporation.
- 361. — Officer's death or separation from office.
- 362. Persons to be substituted.
- 363. Time for substitution.
- 363.1. — In general.
- 364. — Failure to make timely application.
- 365. Proceedings for substitution.

**170A. FEDERAL CIVIL PROCEDURE****II. PARTIES.(Cont'd)**

366. Effect of substitution or denial of application therefor.

**(J) DEFECTS, OBJECTIONS AND AMENDMENTS.**

- 381. In general.
- 382. Misnomer and misdescription.
- 383. Capacity.
- 383.5. Real party in interest.
- 384. Nonjoinder.
- 384.1. — In general.
- 385. — Effect of nonjoinder in general.
- 386. — Relief as to parties before court.
- 387. Misjoinder.
- 387.1. — In general.
- 388. — Striking out or dropping parties.
- 389. Third-party proceedings.
- 390. Intervention.
- 391. Substitution.
- 392. Amendments.

**VI. MOTIONS AND ORDERS.****(A) MOTIONS IN GENERAL.**

- 611.1. In general.
- 611.2. Discretion of court.
- 611.3. Label or theory of motions.
- 611.4. Time requirements on parties.
- 611.5. Issues that may be raised by motion.
- 611.6. Consolidation of motions; successive and redundant motions.
- 611.7. Requisites and sufficiency of motions in general.
- 611.8. Notice, service, and filing.
- 611.9. Requirement to meet and confer.
- 611.10. Speaking motions.
- 611.11. Amendment or withdrawal of motions.
- 611.12. Striking motions.
- 611.13. Briefs in general.
- 611.14. Response, reply, and surreply; reply and surreply briefs.
- 611.15. Supplemental briefs and filings.
- 611.16. Hearing, evidence, and presentation of arguments.
- 611.17. Waiver, abandonment, or default.
- 611.18. Determination.

**(B) ORDERS.**

- 612.1. In general.

**VI. MOTIONS AND ORDERS.(Cont'd)**

- 612.2. Entry, record, and docketing.
- 612.3. Findings and conclusions; reasons for decision.
- 612.4. Nunc pro tunc orders.
- 612.5. Sua sponte orders.
- 612.6. Construction and effect.
- 612.7. Compliance and enforcement.

**(C) RECONSIDERATION.**

- 613.1. In general.
- 613.2. Extraordinary remedy; motion not favored.
- 613.3. Nature and form of remedy; not substitute for appeal.
- 613.4. Power of court.
- 613.5. Discretion of court.
- 613.6. Grounds and factors.
- 613.7. — In general.
- 613.8. — Justice; prevention of injustice.
- 613.9. — Error by court.
- 613.10. — Fraud; misconduct.
- 613.11. — Further evidence or argument.
- 613.12. — Change in law or facts.
- 613.13. — Mistake by parties; excusable neglect; surprise.
- 613.14. — Catch-all provisions.
- 613.15. Time for motion.
- 613.16. Motion; notice.
- 613.17. Sua sponte reconsideration.
- 613.18. Hearing; affidavits and evidence in general.
- 613.19. Burden of proof; presumptions.
- 613.20. Determination.

**(D) MOTIONS IN LIMINE.**

- 614. In general.

**VII. PLEADINGS.****(A) PLEADINGS IN GENERAL.**

- 621. In general.
- 622. Necessity.
- 623. Nature and purpose.
- 624. Time for pleading.
- 625. Form.
- 625.1. — In general.
- 626. — Caption.
- 627. — Paragraphs; separate counts and defenses.

**170A. FEDERAL CIVIL PROCEDURE****VII. PLEADINGS.(Cont'd)**

- 628. — Adoption by reference.
- 629. — Exhibits.
- 630. Sufficiency in general.
- 631. Simplicity, conciseness and directness.
- 633. Certainty, definiteness and particularity.
- 633.1. — In general.
- 634. — Capacity.
- 635. — Conditions precedent.
- 636. — Fraud, mistake and condition of mind.
- 637. — Judgment.
- 638. — Official document or act.
- 639. — Special damage.
- 640. — Time and place.
- 641. Argumentative matter.
- 642. Conclusions in general.
- 650. Evidentiary matter.
- 652. Irrelevant and immaterial matter.
- 653. Recorded matter.
- 654. Construction.
- 654.1. — In general.
- 655. — Construction doing substantial justice.
- 656. — Liberal or strict construction.
- 657. — Construction against pleader.
- 657.5. — Pro se or lay pleadings.  
*Excludes habeas corpus petitions, see HABEAS CORPUS* ¶668.
- (1). In general.
- (2). Civil rights proceedings in general.
- (3). Prisoners' pleadings.
- 658. Demurrer or exception.
- 658.1. — In general.
- 659. — Abolition.
- 660. Signature.
- 660.1. — In general.
- 661. — Attorney's signature.  
*Excludes sanctions, see* ¶2750 *et seq.*, *below*.
- 662. Verification.
- 662.1. — In general.
- 663. — Necessity.
- 664. Filing.
- 665. Service.

**(B) COMPLAINT.**

- 671. In general.
- 672. Nature and purpose.
- 673. Claim for relief in general.
- 674. Theory of claim.

**VII. PLEADINGS.(Cont'd)**

- 675. Alternate, hypothetical and inconsistent claims.
- 675.1. — In general.
- 676. — Multifariousness.
- 677. Anticipating defenses.
- 678. Information and belief.
- 680. Prayer.
- 681. Particular cases.

**(C) ANSWER.****1. IN GENERAL.**

- 731. In general.
- 732. Nature and purpose.
- 733. Codefendants' joint or separate pleadings.
- 734. Time for pleading.
- 734.1. — In general.
- 735. — Extension.
- 736. Requisites and sufficiency in general.
- 737. Alternate, hypothetical and inconsistent defenses.
- 737.1. — In general.
- 738. — Particular defenses.
- 739. Pleading plaintiff's failure to state cause of action.
- 740. Pleas.
- 741. Denials.
- 741.1. — In general.
- 742. — General or special denials.
- 743. — Lack of knowledge or information.
- 744. Admissions.
- 744.1. — In general.
- 745. — Failure to deny.

**2. AFFIRMATIVE DEFENSE OR AVOIDANCE.**

- 751. In general.
- 752. Contributory negligence, assumption of risk and similar defenses.
- 753. Fraud.
- 753.5. Frauds, statute of.
- 754. Illegality.
- 754.5. Immunity.
- 755. Limitations and laches.
- 756. Release, payment and accord and satisfaction.
- 757. Rescission.
- 758. Pendency of another action.
- 759. Waiver and estoppel.



**170A. FEDERAL CIVIL PROCEDURE****3. SET-OFFS, COUNTERCLAIMS  
AND CROSS-CLAIMS.**

- 771. In general.
- 772. Set-offs.
- 772.1. — In general.
- 773. — Counterclaims.
- 774. — Nature and purpose.
- 775. Compulsory counterclaims.
- 775.1. — In general.
- 776. — Necessity that counterclaim arise out of same transaction or occurrence in general.
- 777. — Particular compulsory counterclaims.
- 778. Permissive counterclaims.
- 778.1. — In general.
- 779. — Parties involved.
- 780. — Particular permissive counterclaims.
- 781. Legal counterclaims in actions for equitable relief.
- 782. Sufficiency of counterclaims.
- 782.1. — In general.
- 783. — Alternate, hypothetical and inconsistent counterclaims.
- 784. Counterclaim maturing or acquired after pleading.
- 785. Effect of counterclaim.
- 786. Cross-claim against coparty.

**(D) REPLY AND SUBSEQUENT PLEADINGS.**

- 801. In general.
- 802. Necessity of reply in general.
- 803. Discretion of court; order for reply.
- 804. Particular issues.
- 804.1. — In general.
- 805. — Illegality.
- 806. — Limitations.
- 807. — Mistake.
- 808. — Rescission.
- 810. Admissions and denials.
- 810.1. — In general.
- 811. — Failure to reply.
- 812. Counterclaim in reply.
- 813. Sufficiency of reply.
- 813.1. — In general.
- 814. — Departure.
- 815. Pleadings subsequent to reply.

**(E) AMENDMENTS.**

- 821. In general.
- 822. Nature and purpose.
- 823. Necessity.
- 824. Time for amendment in general.
- 825. Amendment as of course.
- 826. Amendment on court's own motion.
- 827. Leave of court in general.
- 828. Discretion of court.
- 828.1. — In general.
- 829. — Successive applications.
- 830. — Time for amendment.
- 831. — Conforming to proof.
- 832. — New cause of action or defense.
- 833. Liberality in allowing amendment.
- 834. Injustice or prejudice.
- 835. Conforming to proof.
- 835.1. — In general.
- 836. — Time for amendment.
- 837. — Issues tried by consent of parties.
- 838. — New cause of action or defense.
- 839. Complaint.
- 839.1. — In general.
- 840. — Time for amendment.
- 841. — New cause of action in general.
- 842. — Theory or form of action.
- 843. — Nature and extent of relief sought.
- 844. Answer.
- 844.1. — In general.
- 845. — Time for amendment.
- 846. — New defense.
- 847. — Counterclaim.
- 847.5. Cross-claims.
- 848. Reply and subsequent pleadings.
- 849. Motion and proceedings for allowance.
  - (1). In general.
  - (2). Requisites of motion.
  - (3). Amendments by briefs or motion papers.
  - (4). Burden of proof.
  - (5). Hearing, determination, order; matters considered.
  - (6). Reconsideration, reargument, or rehearing.
- 850. Conditions on allowance.
- 851. Form and sufficiency of amendment; futility.
- 852. Effect of amendment.

**170A. FEDERAL CIVIL PROCEDURE****(F) SUPPLEMENTAL PLEADINGS.**

- 861. In general.
- 862. Nature and purpose.
- 863. Discretion of court.
- 864. Complaint.
- 864.1. — In general.
- 865. — Time for filing.
- 866. — New cause of action.
- 867. Answer.
- 867.1. — In general.
- 868. — Time for filing.
- 869. — New defense.
- 870. Reply and subsequent pleadings.
- 871. Effect.

**(G) ISSUES, PROOF AND VARIANCE.**

- 881. In general.
- 883. General denial, issues under.
- 884. Matters to be proved.
- 884.1. — In general.
- 885. — Admitted matters.
- 886. — Affirmative defenses.
- 887. Evidence admissible under pleadings.
- 888. Variance.

**(H) DEFECTS IN AND OBJECTIONS TO PLEADINGS IN GENERAL.**

- 901. In general.
- 902. Time for objection.
- 903. Mode and sufficiency of objection.
- 904. Failure to object.
- 904.1. — In general.
- 905. — Objection on one ground as waiver of other grounds.
- 906. Failure to stand on or renew objection.
- 907. Aider of pleading by verdict or judgment.

**(J) BILL OF PARTICULARS; MORE DEFINITE STATEMENT.****1. IN GENERAL.**

- 941. In general.
- 942. Discretion of court.
- 943. Nature and purpose in general.
- 944. Distinction between remedies.
- 945. Grounds in general.
- 946. Filing motion as preliminary to other motions.
- 947. Necessity.
- 947.1. — In general.

**VII. PLEADINGS.(Cont'd)**

- 948. — To prepare responsive pleading.
- 949. — To prepare for trial.
- 950. Sufficiency of pleading in other respects.
- 951. Ability to furnish particulars.
- 952. Obtaining evidence or names of witnesses.
- 952.1. — In general.
- 953. — Depositions and discovery, availability of.
- 954. Matters within movant's knowledge.
- 955. Order on court's own motion.
- 956. Time for motion.
- 957. Motion and proceedings thereon.
- 958. Determination of motion.
- 959. Sufficiency.
- 960. Amendment.
- 961. Effect.
- 961.1. — In general.
- 962. — Bill or statement as part of pleadings.

**2. PARTICULAR CASES.**

- 971. In general.
- 972. Accounting, actions for.
- 973. Anti-trust cases.
- 974. Automobile cases.
- 974.1. — In general.
- 975. — Negligence.
- 976. — Injury or damage.
- 977. Banks, actions involving.
- 978. Bonds, actions involving.
- 978.1. — In general.
- 979. — Breach.
- 980. — Damage.
- 980.4. Civil rights cases.
- 980.5. — In general.
- 980.6. — Employees and employment discrimination.
- 981. Contract cases in general.
- 981.1. — In general.
- 982. — Nature, terms and time of contract.
- 983. — Breach.
- 984. — Damage.
- 985. Corporations and business organizations in general, actions involving.
- 986. Declaratory judgment cases.
- 987. Denaturalization cases.

**170A. FEDERAL CIVIL PROCEDURE****VII. PLEADINGS.(Cont'd)**

- 988. Employees' actions in general.
- 988.1. — In general.
- 989. — Negligence.
- 990. — Time, place and circumstances of injury.
- 991. — Extent of injury or damage.
- 992. Fair Labor Standards Act cases.
- 992.1. — In general.
- 993. — Nature and terms of employment or employer's business.
- 994. — Violations in general.
- 995. — Names of employees and violations relating to particular employees.
- 997. Fraudulent transfers, actions to set aside.
- 998. Injunction cases in general.
- 999. Insurance cases.
- 999.1. — In general.
- 1000. — Terms of policies.
- 1001. — Nature and cause of loss.
- 1002. — Extent of loss.
- 1003. — Defenses.
- 1004. Literary property, actions involving.
- 1005. Negligence, actions for in general.
- 1005.1. — In general.
- 1006. — Acts constituting negligence.
- 1007. — Time, place and circumstances of injury.
- 1008. — Defenses.
- 1009. — Extent of injury or damage.
- 1010. Penalties, actions for.
- 1010.1. — In general.
- 1011. — Nature and elements of wrongful act.
- 1012. — Amount recoverable.
- 1013. Railroads and street railroads, actions involving.
- 1014. Sale of personalty, actions involving.
- 1014.1. — In general.
- 1015. — Nature and terms of contract.
- 1016. — Damage.
- 1017. Tax cases.
- 1018. Tort cases in general.
- 1018.1. — In general.
- 1019. — Nature and elements of tortious act.
- 1020. — Injury or damage.

**(L) JUDGMENT ON THE PLEADINGS.****1. IN GENERAL.**

- 1041. In general.
- 1042. Nature and purpose.
- 1044. Clear right to judgment.
- 1045. Want of fact issue.
- 1045.1. — In general.
- 1046. — Admissions, effect of.
- 1047. — Denials, effect of.
- 1048. — Affirmative defense or avoidance, effect of.
- 1049. Insufficiency of claim or defense.
- 1051. Time for motion.
- 1052. Motion and proceedings thereon.
- 1053. Determination of motion.
- 1053.1. — In general.
- 1054. — Matters considered.
- 1055. — Matters deemed admitted.

**2. PARTICULAR CASES.**

- 1061. In general.
- 1062. Automobile cases.
- 1063. Contract cases in general.
- 1064. Employees' actions.
- 1065. Injunction cases.
- 1066. Insurance cases.
- 1067. Negligence cases in general.
- 1068. Tax cases.

**(N) STRIKING PLEADING OR MATTER THEREIN.**

- 1101. In general.
- 1102. Nature and purpose of remedy.
- 1103. Discretion of court.
- 1104. Motion not favored.
- 1105. Grounds.
- 1105.1. — In general.
- 1106. — Want of issue for hearing or trial.
- 1107. — Prejudice from allegations.
- 1108. Affirmative defense or avoidance.
- 1108.1. — In general.
- 1109. — Contributory negligence, assumption of risk and similar defenses.
- 1110. — Fraud.
- 1111. — Illegality.
- 1112. — Limitations, laches and prescription.
- 1113. — Release, payment and accord and satisfaction.
- 1114. — Rescission.

**170A. FEDERAL CIVIL PROCEDURE****VII. PLEADINGS.(Cont'd)**

- 1115. — Res judicata and multiplicity of actions.
- 1116. — Waiver and estoppel.
- 1117. Amended pleadings.
- 1118. Anticipatory allegations.
- 1119. Capacity and representation, allegations of.
- 1120. Commingled claims or defenses.
- 1121. Conclusions and generalities.
- 1122. Counterclaims.
- 1122.5. Crossclaims.
- 1123. Denials.
- 1124. Evidentiary matter.
- 1125. Immaterial, irrelevant or unresponsive matter.
- 1125.1. — In general.
- 1126. — Particular allegations.
- 1127. Impertinent or scandalous matter.
- 1128. Inconsistent matter.
- 1129. Insufficient allegations in general.
- 1129.1. — In general.
- 1130. — Propriety of motion to strike.
- 1131. — Particular complaints or allegations therein.
- 1132. — Particular answers or allegations therein.
- 1133. — Particular replies or allegations therein.
- 1134. Law, matters of.
- 1135. Limitations and laches, claims barred by.
- 1136. Moot matters.
- 1137. Prayer or allegation of damages.
- 1138. Redundant, indirect or prolix matter.
- 1139. Sham; frivolous matter.
- 1140. Unnecessary matter; matter in issue under other allegations.
- 1141. Untimely allegations.
- 1142. Order on court's own motion.
- 1143. Time for motion.
- 1144. Motion and proceedings thereon.
- 1145. Determination of motion.
- 1145.1. — In general.
- 1146. — Matters considered.
- 1147. — Matters deemed admitted.
- 1148. — Vacation of order.
- 1149. Effect of determination.

**VII. PLEADINGS.(Cont'd)**

- 1149.1. — In general.
- 1150. — Pleading over.

**X. DEPOSITIONS AND DISCOVERY.****(A) IN GENERAL.**

- 1261. In general.
- 1262. Nature and purpose.
- 1262.1. — In general.
- 1263. — Preparation for trial.
- 1264. Actions in which remedy is available.
- 1265. Other remedy, availability or prior use of.
- 1266. Persons subject.
- 1267. Discretion of court.
- 1267.1. — In general.
- 1268. — Liberality in allowance of remedy.
- 1269. Grounds and objections.
- 1269.1. — In general.
- 1270. — Inconvenience or other detriment.
- 1271. Proceedings to obtain.
- 1271.5. Protective orders.
- 1272. Scope.
- 1272.1. — In general.
- 1273. — Adverse party's case, matters relating to.
- 1274. — Evidentiary matters.
- 1275. — Identity and location of witnesses and others.
- 1275.5. Jurisdictional discovery.
- 1275.7. Settlement-related discovery.
- 1276. Use of testimony or information.
- 1277. Effect.
- 1278. Failure to respond; sanctions.

**(B) PERPETUATING TESTIMONY BEFORE ACTION OR PENDING APPEAL.**

- 1291. In general.
- 1292. Nature and purpose of remedy.
- 1293. Grounds and objections.
- 1294. Petition.
- 1295. Notice and service.
- 1296. Order and examination.
- 1297. Use of testimony.
- 1298. Effect.
- 1299. Failure to respond; sanctions.

**170A. FEDERAL CIVIL PROCEDURE****(C) DEPOSITIONS OF PARTIES AND  
OTHERS PENDING ACTION.****1. IN GENERAL.**

- 1311. In general.
- 1312. Letters rogatory from without the United States.
- 1313. Nature and purpose.
- 1314. — In general.
- 1315. — Taking for use in another proceeding.
- 1316. — Jurisdiction, determination of.
- 1317. — Impeachment, contradiction or corroboration of witness at trial.
- 1318. Actions in which depositions may be taken.
- 1319. Other remedy, availability or prior use of.
- 1319.1. — In general.
- 1320. — Bill of particulars.
- 1321. — Written interrogatories.
- 1322. — Documents, discovery and production of.
- 1323. Persons whose depositions may be taken.
- 1323.1. — In general.
- 1324. — Parties.
- 1325. — Officers and employees of corporations.
- 1326. Stipulations.
- 1327. Grounds for taking.
- 1327.1. — In general.
- 1328. — Inability to procure attendance of witness in general.
- 1329. — Age, sickness, infirmity or imprisonment.
- 1330. — Nonresidence or absence of witness in general.
- 1331. — Absence from the United States.
- 1332. Objections to taking and grounds for refusal.
- 1333. Compensation of deponent.
- 1334. Errors and irregularities.

**2. PROCEEDINGS.**

- 1341. In general.
- 1342. Time for motion for taking.
- 1342.1. — In general.
- 1343. — Condition of cause.
- 1344. Discretion of court.
- 1344.1. — In general.

**X. DEPOSITIONS AND DISCOVERY.(Cont'd)**

- 1345. — Leave of court, necessity for.
- 1346. Notice of examination or motion for leave to examine.
- 1346.1. — In general.
- 1347. — Necessity of notice.
- 1348. — Name and address of deponent.
- 1349. — Time and place.
- 1350. — Subject of examination.
- 1351. — Service.
- 1352. Order for taking.
- 1353. Subpoena.
- 1353.1. — In general.
- 1354. — Subpoena duces tecum.
- 1355. Protective orders.
- 1355.1. — In general.
- 1356. — Discretion of court.
- 1357. — Vacating notice.
- 1358. — Order that deposition be not taken.
- 1359. — Time and place of, and procedure for, taking.
- 1360. — Requiring written interrogatories.
- 1361. — Limiting scope of examination in general.
- 1362. — Secret processes, developments or research.
- 1363. — Privileged matters in general.
- 1364. — Irrelevant and immaterial matters.
- 1365. — Annoyance, embarrassment or oppression.
- 1366. — Motions for protective orders and proceedings thereon.
- 1367. Terminating or limiting pending oral examination.
- 1367.1. — In general.
- 1368. — Bad faith, annoyance, embarrassment or oppression.
- 1369. Written interrogatories, proceedings for depositions on.
- 1369.1. — In general.
- 1370. — Orders for protection of parties and deponents.
- 1371. Persons before whom depositions may be taken.
- 1372. Record of testimony; furnishing copies.
- 1373. Submission to deponent; changes; signing.

**170A. FEDERAL CIVIL PROCEDURE****X. DEPOSITIONS AND DISCOVERY.(Cont'd)**

- 1374. Certification.
- 1375. Filing.

**3. EXAMINATION IN GENERAL.**

- 1381. In general.
- 1382. Order of taking more than one examination in same action.
- 1383. Time and place of examination.
- 1384. Cross-examination.
- 1385. Redirect examination.

**4. SCOPE OF EXAMINATION.**

- 1401. In general.
- 1402. Grounds of claim or defense.
- 1403. Relevancy and materiality.
- 1404. Probable admissibility at trial of evidence sought.
- 1405. Admitted matters and matters already known or available.
- 1406. Business transactions and practices in general.
- 1407. Circumstances of accident or injury and cause thereof.
- 1408. Documents, examination involving.
- 1409. Events after beginning of action.
- 1410. Extent of injury or damage.
- 1411. Hearsay.
- 1412. Identity and location of witnesses and others.
- 1413. Opinions, conclusions and matters unknown.
- 1417. Work product privilege; trial preparation materials.

**5. SUPPRESSION; USE AND EFFECT.**

- 1431. Suppression.
- 1432. Use.
- 1432.1. — In general.
- 1433. — Continued existence of grounds for taking in general.
- 1434. — Age, sickness, infirmity or imprisonment.
- 1435. — Death.
- 1436. — Exceptional circumstances.
- 1437. — Different use than that for which taken; different proceeding.
- 1438. — Incompleteness of deposition.
- 1439. — Part of deposition.

**X. DEPOSITIONS AND DISCOVERY.(Cont'd)**

- 1440. — Objections to use of depositions.
- 1441. Effect.

**6. FAILURE TO APPEAR OR TESTIFY; SANCTIONS.**

- 1451. In general.
- 1452. Order compelling answer.
- 1453. Payment of expenses.
- 1454. Facts taken as established or denial precluded.
- 1455. Striking out defaulting party's pleading.
- 1456. Contempt.

**(D) WRITTEN INTERROGATORIES TO PARTIES.****1. IN GENERAL.**

- 1471. In general.
- 1472. Nature and purpose.
- 1473. Actions in which interrogatories may be served.
- 1474. Other remedy, availability or prior use of.
- 1474.1. — In general.
- 1475. — Bill of particulars.
- 1476. — Deposition.
- 1477. — Documents, discovery and production of.
- 1478. Parties subject to interrogation.
- 1478.1. — In general.
- 1479. — Adverse parties, who are.
- 1480. — Officer of corporation, partnership or association.
- 1481. Stipulations.
- 1482. Grounds.
- 1483. Objections and grounds for refusal.
- 1484. Discretion of court in general.
- 1485. Leave of court, necessity for.
- 1486. Motion for leave to submit, and proceedings thereon.
- 1487. Service or filing.
- 1488. Number, form and importance.
- 1488.1. — In general.
- 1489. — Specificity and definiteness.
- 1490. Striking out interrogatories.
- 1491. Effect.
- 1492. Protective orders.

**2. SCOPE.**

- 1501. In general.
- 1502. Grounds of claim or defense.

**170A. FEDERAL CIVIL PROCEDURE****X. DEPOSITIONS AND DISCOVERY.(Cont'd)**

- 1503. Relevancy and materiality.
- 1504. Probable admissibility at trial of evidence sought.
- 1505. Admitted matters and matters already known or available.
- 1506. Adverse party's case; contention interrogatories.
- 1507. Circumstances of accident or injury or cause thereof.
- 1508. Documents, examination involving.
- 1509. Extent of injury or damage.
- 1510. Events after beginning of action.
- 1511. Evidentiary matters.
- 1512. Identity and location of witnesses and others.
- 1513. Opinions, conclusions and matters unknown.
- 1517. Work product privilege; trial preparation materials.

**3. ANSWERS; FAILURE TO ANSWER.**

- 1531. In general.
- 1532. Duty to answer.
- 1532.1. — In general.
- 1533. — Inability to answer.
- 1534. Sufficiency; supplementation of answers.
- 1535. Striking out.
- 1536. Use.
- 1537. Failure to answer; sanctions.
- 1537.1. — In general.
- 1538. — Order compelling answer.
- 1539. — Payment of expenses.
- 1540. — Facts taken as established or denial precluded.
- 1541. — Striking out defaulting party's pleading.
- 1542. — Contempt.

**(E) DISCOVERY AND PRODUCTION OF DOCUMENTS AND OTHER TANGIBLE THINGS.****1. IN GENERAL.**

- 1551. In general.
- 1552. Nature and purpose.
- 1553. Actions in which remedy is available.
- 1554. Other remedy, availability or prior use of.
- 1555. Persons subject.

**X. DEPOSITIONS AND DISCOVERY.(Cont'd)**

- 1556. Stipulations.
- 1557. Grounds.
- 1558. Objections and grounds for refusal.
- 1558.1. — In general.
- 1559. — Expense and inconvenience.
- 1560. Effect.

**2. SUBJECT MATTER IN GENERAL.**

- 1571. In general.
- 1572. Relevancy and materiality.
- 1573. Probable admissibility at trial.
- 1574. Existence, possession, custody, control and location.

**3. PARTICULAR SUBJECT MATTERS.**

- 1581. In general.
- 1582. Audits, records of.
- 1583. Bills, vouchers and records of repairs.
- 1584. Books of account.
- 1585. Carriage of passengers or goods, records of.
- 1586. Bank records; checks.
- 1587. Contracts.
- 1588. Corporations and business organizations.
- 1589. Deeds and other conveyances.
- 1590. Employees' reports to employers.
- 1591. Employment, records of.
- 1592. Files and contents thereof in general.
- 1593. Government records, papers and property.
- 1594. Investigations, reports and records of in general.
- 1595. Insurance, matters relating to.
- 1596. Literary and musical compositions.
- 1597. Machinery and appliances.
- 1598. Medical and hospital reports and records.
- 1599. Photographs; right to take photographs in general.
- 1601. Releases and similar matters.
- 1602. Statements taken in preparation for litigation.
- 1603. Taxes, matters relating to.
- 1604. Work product privilege; trial preparation materials.
  - (1). In general.
  - (2). Waiver.

**170A. FEDERAL CIVIL PROCEDURE****4. PROCEEDINGS.**

- 1611. In general.
- 1612. Time for motion.
- 1613. Discretion of court.
- 1613.1. — In general.
- 1614. — Leave of court, necessity for.
- 1615. Motion and proceedings thereon.
- 1615.1. — In general.
- 1616. — Good cause in general.
- 1617. — Relevancy and materiality.
- 1618. — Designation of document or thing and contents thereof.
- 1619. — Possession, custody and control.
- 1620. — Conclusions and opinions.
- 1621. — Successive motions.
- 1622. Notice.
- 1623. Determination of motion.
- 1624. Order.
- 1625. Protective orders.

**5. COMPLIANCE; FAILURE TO COMPLY.**

- 1631. In general.
- 1632. Duty to comply.
- 1633. Time for compliance.
- 1634. Sufficiency of compliance.
- 1635. Use of subject matter.
- 1636. Failure to comply; sanctions.
- 1636.1. — In general.
- 1637. — Payment of expenses.
- 1638. — Facts taken as established or denial precluded.
- 1639. — Striking out defaulting party's pleading.
- 1640. — Contempt.

**(F) PHYSICAL OR MENTAL EXAMINATION OF PERSON.**

- 1651. In general.
- 1652. Actions in which examinations may be had.
- 1653. Persons subject to examination.
- 1654. Grounds and objections.
- 1655. Motion.
- 1656. Notice.
- 1657. Order.
- 1658. Place and time.
- 1659. Report.
- 1660. Use of information obtained.
- 1663. Failure to comply.

**X. DEPOSITIONS AND DISCOVERY.(Cont'd)**

- 1663.1. — In general.
- 1664. — Contempt.

**(G) ADMISSIONS ON REQUEST.**

- 1671. In general.
- 1672. Nature and purpose.
- 1673. Subject matter.
- 1673.1. — In general.
- 1674. — Relevancy and materiality.
- 1676. Request.
- 1676.1. — In general.
- 1677. — Striking request.
- 1678. Duty to respond.
- 1679. Time for response.
- 1679.1. — In general.
- 1680. — Allowance of additional time.
- 1681. Response.
- 1681.1. — In general.
- 1682. — Denial of duty to respond or statement of inability.
- 1683. Use.
- 1684. Effect.
- 1685. Failure to respond; sanctions.
- 1686. Withdrawal or amendment of response.

**XI. DISMISSAL.****(A) VOLUNTARY DISMISSAL.**

- 1691. In general.
- 1692. Nature and purpose.
- 1693. Discretion of court.
- 1694. Dismissal of part of cause of action.
- 1695. Dismissal as to part of parties in general.
- 1696. Class actions.
- 1700. Grounds and objections.
- 1701. Time for dismissal; condition of cause.
- 1701.1. — In general.
- 1702. — Answer, effect of in general.
- 1703. — Counterclaim, effect of.
- 1704. — Counterclaim, time for dismissal of.
- 1705. — Trial, dismissal during.
- 1706. Stipulations.
- 1707. Motion and proceedings thereon.
- 1708. Notice.
- 1709. Determination.
- 1710. Order.
- 1711. Terms and conditions.



**170A. FEDERAL CIVIL PROCEDURE****XI. DISMISSAL.(Cont'd)**

- 1711.1. — In general.
- 1712. — Payment of costs and expenses.
- 1713. Effect.
- 1713.1. — In general.
- 1714. — Successive dismissals.
- 1715. Reconsideration, vacation, or setting aside.

**(B) INVOLUNTARY DISMISSAL.****1. IN GENERAL.**

- 1721. In general.
- 1722. Nature and purpose in general.
- 1723. Other remedy, availability or prior use of.
- 1723.1. — In general.
- 1724. — Bill of particulars.
- 1725. — Demurrer.
- 1726. — Discovery.
- 1727. — Striking pleading or matter therein.
- 1728. Discretion of court.
- 1729. Dismissal of part of cause of action.

**2. GROUNDS IN GENERAL.**

- 1741. In general.
- 1741.3. Violation of a court order or rule in general.
- 1741.5. State secret privilege.
- 1743. Misjoinder of claims or defenses.
- 1744. Parties, defects as to.
- 1744.1. — In general.
- 1745. — Capacity in general.
- 1746. — Capacity in particular actions.
- 1747. — Nonjoinder in general.
- 1748. — Nonjoinder in particular actions.
- 1749. — Misjoinder in general.
- 1750. — Misjoinder in particular actions.
- 1751. Process, defects in.
- 1752. Affirmative defenses, raising by motion to dismiss.
- 1752.1. — In general.
- 1753. — Contributory negligence, assumption of risk and similar defenses.
- 1753.5. — Immunity.
- 1754. — Limitations, laches and prematurity.
- 1755. — Pendency of another action.
- 1756. — Statute of frauds.

**XI. DISMISSAL.(Cont'd)**

- 1757. — Waiver and estoppel.
- 1758. Failure to prosecute.
- 1758.1. — In general.
- 1759. — Length of delay in general.
- 1760. — Prejudice from delay.
- 1761. — Process, delay in obtaining service of.
- 1762. — Excuses in general.
- 1763. — Death or disability.
- 1764. — Pendency of other proceedings.
- 1765. Stipulations, breach of.

**3. PLEADING, DEFECTS IN, IN GENERAL.**

- 1771. In general.
- 1772. Insufficiency in general.
- 1773. Clear or certain nature of insufficiency.
- 1774. Counterclaim.
- 1775. Prayer.

**4. PARTICULAR ACTIONS, INSUFFICIENCY OF PLEADINGS IN.**

- 1781. In general.
- 1788.5. Civil rights actions.
- 1788.6. — In general.
- 1788.10. — Prisoners' actions.
- 1789. Conspiracy and fraud, actions involving.
- 1790. Contracts, actions involving in general.
- 1791. Copyright, trademark, patent and unfair competition actions.
- 1792. Creditors' actions.
- 1793. Employees and employment discrimination, actions involving.
- 1793.1. — In general.
- 1794. — Fair Labor Standards Act cases.
- 1795. Governmental bodies or officers, actions involving.
- 1797. Insurance actions.
- 1798. Land, actions involving in general.
- 1799. Leases, actions involving.
- 1800. Libel and slander, actions for.
- 1801. Mortgages, actions involving.
- 1802. Negligence, actions for in general.
- 1803. Negotiable instruments, actions involving.
- 1804. Personalty, actions involving in general.
- 1805. Railroads and street railroads, actions involving.
- 1806. Receivers, actions involving.
- 1807. Rescission of contracts.

**170A. FEDERAL CIVIL PROCEDURE****XI. DISMISSAL.**(Cont'd)

- 1808. Specific performance.
- 1809. Stockholders', investors, and other class actions.
- 1810. Tax actions.
- 1811. Tort actions in general.
- 1812. Trusts, actions involving.

**5. PROCEEDINGS.**

- 1821. In general.
- 1822. Time for motion; condition of cause.
- 1822.1. — In general.
- 1823. — Answer, effect of.
- 1824. Dismissal on court's own motion.
- 1825. Motion and proceedings thereon.
- 1826. Notice.
- 1827. Determination.
- 1827.1. — In general.
- 1828. — Time of determination; reserving decision.
- 1829. — Construction of pleadings.
- 1830. — Doubtful issues.
- 1831. — Fact issues.
- 1832. — Matters considered in general.
- 1833. — Affidavits.
- 1835. — Matters deemed admitted; acceptance as true of allegations in complaint.
- 1836. Order.
- 1837. Effect.
- 1837.1. — In general.
- 1838. — Pleading over.
- 1839. Reconsideration, vacation, or setting aside.
- 1839.1. — In general.
- 1840. — Grounds and objections.
- 1841. — Time for vacation.
- 1842. — Proceedings for vacation.
- 1843. — Reconsideration of denial of motion to dismiss.

**XII. CONTINUANCE.**

- 1851. In general.
- 1852. Discretion of court.
- 1853. Stipulations.
- 1854. Persons entitled.
- 1855. Grounds and factors.
- 1855.1. — In general.

**XII. CONTINUANCE.**(Cont'd)

- 1856. — Absence of witness or evidence in general.
- 1857. — Prejudice from absence of witness or evidence.
- 1858. — Amendments and change of parties.
- 1859. — Want of preparation.
- 1860. Motion and proceedings thereon.
- 1861. Determination and order.

**XIII. REFERENCE.**

*Excludes reference to United States Magistrates, see UNITED STATES MAGISTRATES or to Bankruptcy Court, see BANKRUPTCY.*

- 1871. In general.
- 1872. Nature and purpose.
- 1873. Discretion and power of court.
- 1874. Stipulations.
- 1875. Grounds, objections and scope.
- 1875.1. — In general.
- 1876. — Complicated nature of issues.
- 1877. Particular proceedings and issues.
- 1877.1. — In general.
- 1878. — Accounting.
- 1880. — Conspiracy.
- 1881. — Damages and relief obtainable.
- 1882. — Foreign law.
- 1883. — Liability in general.
- 1884. — Process, validity and effect of.
- 1885. — Solvency or other financial status.
- 1887. Proceedings to obtain reference.
- 1888. Order for reference.
- 1888.1. — In general.
- 1889. — Vacation; termination of reference.
- 1890. Master or referee.
- 1890.1. — In general.
- 1891. — Appointment and tenure.
- 1892. — Compensation.
- 1893. Proceedings on reference.
- 1893.1. — In general.
- 1894. — Evidence.
- 1895. — Instructions to master or referee in pending reference.
- 1896. Report, findings and conclusions.
- 1896.1. — In general.
- 1897. — Necessity and sufficiency in general.
- 1898. — Evidence, report of.

**170A. FEDERAL CIVIL PROCEDURE****XIII. REFERENCE.**(Cont'd)

- 1899. — Objections; failure to object.
- 1900. — Conclusiveness in general.
- 1901. — Clear error in general.
- 1902. — Clear error; particular findings.
- 1903. — Weight and sufficiency of evidence supporting.
- 1904. — Report as evidence.
- 1905. — Adoption or rejection.
- 1906. — Modification.
- 1907. — Further evidence before court.
- 1908. — Recommittal.

**XIV. PRE-TRIAL CONFERENCE.**

- 1921. In general.
- 1922. Nature and purpose.
- 1923. Discretion of court.
- 1924. Grounds and objections.
- 1925. Scope.
- 1925.1. — In general.
- 1926. — Duty to disclose issues to be raised at trial.
- 1927. — Simplification and elimination of issues in general.
- 1928. — Admissibility and procurement of evidence.
- 1931. — Limitation of number of witnesses.
- 1933. — Relief allowable.
- 1934. — Settlement of case.
- 1935. Pretrial order.
- 1935.1. — In general.
- 1936. — Vacation.
- 1937. Record or report.
- 1938. Effect.
- 1938.1. — In general.
- 1939. — Limitation of issues in general.
- 1940. — Particular issues, elimination of.
- 1941. — Admissibility of evidence.
- 1942. — Waiver of issues not raised.
- 1943. — Dismissal of claim or defense.

**XV. TRIAL.****(A) IN GENERAL.**

- 1951.1. In general.
- 1951.2. Nature and purpose of trial in general.
- 1951.3. Role and obligations of judge.
- 1951.4. — In general.

**XV. TRIAL.**(Cont'd)

- 1951.5. — Discretion.
- 1951.6. — Order, decorum, and efficiency of proceedings.
- 1951.7. Fair and impartial trial in general.
- 1951.8. Requisites of fair trial.
- 1951.9. Time limitations.
- 1951.10. Management of courtroom in general.
- 1951.11. Seating in court.
- 1951.12. Access to proceedings; public trial.
- 1951.13. Cameras, recording devices, sketches, and drawings.
- 1951.14. Security.
- 1951.15. Conduct of or affecting witnesses.
- 1951.16. — In general.
- 1951.17. — Appearance and attire.
- 1951.18. — Conduct of witness.
- 1951.19. — Restraint.
- 1951.20. Conduct of or affecting parties.
- 1951.21. — In general.
- 1951.22. — Appearance and attire.
- 1951.23. — Conduct of party.
- 1951.24. — Restraint.
- 1951.25. — Presence of party.
- 1951.26. Presence and conduct of spectators.
- 1951.27. Counsel.
- 1951.28. — In general.
- 1951.29. — Appointment of counsel.
- 1951.30. — Adequacy of representation.
- 1951.31. Experts and others appointed to assist court.
- 1951.32. Experts and others appointed to assist parties.
- 1951.33. Trial briefs.
- 1951.34. Ex parte communications.
- 1951.35. Court reporters and stenographers.
- 1951.36. Adjournment.
- 1951.37. Experiments and tests.
- 1951.38. Publicity, media coverage, and occurrences extraneous to trial.
- 1951.39. Gag orders and similar restraints.
- 1951.40. Mistrial.
- 1951.41. — In general.
- 1951.42. — Particular cases.
- 1953. Separate or consolidated trials of different actions.
- 1954. Separate trials in same action.
- 1954.1. — In general.

**170A. FEDERAL CIVIL PROCEDURE****XV. TRIAL.**(Cont'd)

- 1955. — Grounds and objections.
- 1956. Separate trial as to particular parties.
- 1957. Separate trial of issues raised by particular pleadings.
- 1957.1. — In general.
- 1958. — Counterclaims or cross-claims.
- 1959. Separate trial of particular issues.
- 1959.1. — In general.
- 1960. — Contracts, existence and validity of.
- 1961. — Damages.
- 1962. — Equitable issues.
- 1963. — Limitations and laches.
- 1964. — Release.
- 1965. — Res judicata or pendency of another action.
- 1966. Notice.
- 1967. Right to open and close.
- 1968. View and inspection.
- 1969. Judge's remarks and conduct.
- 1970. Counsel's conduct and arguments.
- 1970.1. — In general.
- 1971. — Opening statements in general.
- 1972. — Sufficiency of opening statements.
- 1973. — Statements as to facts, comments and arguments in general.
- 1973.5. — Insurance or indemnity, evidence of.
- 1974. Jury's custody, conduct and deliberations.
- 1974.1. — In general.
- 1975. — Instructions after submission of case.
- 1976. Objections and exceptions.

**(B) TIME FOR TRIAL; DOCKETS, LISTS AND CALENDARS.**

- 1991. In general.
- 1992. Discretion of court.
- 1993. Assignment of cases for trial.
- 1993.1. — In general.
- 1994. — Precedence.
- 1995. Transfer of cases.
- 1996. Striking or dropping case.
- 1996.1. — In general.
- 1997. — Reinstatement.
- 1998. Waiver of objections.

**(C) RECEPTION OF EVIDENCE.**

- 2011. In general.
- 2012. Separation and exclusion of witnesses.
- 2013. Offer of proof.
- 2014. Conditional admission or rejection.
- 2015. Order of proof and rebuttal.
- 2016. Reopening case for further evidence.
- 2017. Objections.
- 2017.1. — In general.
- 2018. — Motions to strike.
- 2019. — Failure to object; waiver.

**(F) TAKING CASE OR QUESTION FROM JURY; PREVERDICT MOTION FOR JUDGMENT AS MATTER OF LAW.****1. IN GENERAL.**

- 2111. In general.
- 2112. Motions by or acquiescence of both parties.
- 2113. Withdrawal of juror.
- 2114. Nature and form of remedy.
- 2114.1. — In general.
- 2115. — Demurrer to evidence.
- 2116. — Dismissal or nonsuit.
- 2117. — Direction of verdict.
- 2118. Grounds and objections.
- 2118.1. — In general.
- 2119. — Variance.
- 2120. — Jury's failure to agree.
- 2121. Motion and proceedings thereon.
- 2121.1. — In general.
- 2122. — Time for motion.
- 2123. — Sufficiency.
- 2124. — Reservation of motion or decision.
- 2125. — Abandonment or waiver of motion.
- 2126. Determination.
- 2126.1. — In general.
- 2127. — Construction of evidence.
- 2128. Order.
- 2129. Effect.

**2. QUESTIONS FOR JURY.**

- 2141. In general.
- 2142. Weight and sufficiency of evidence.
- 2142.1. — In general.
- 2143. — Evidence which would require verdict to be set aside.

**170A. FEDERAL CIVIL PROCEDURE****XV. TRIAL.**(Cont'd)

- 2144. — Court's opinion as to weight of evidence, effect of.
- 2145. — Preponderance of evidence.
- 2146. — Scintilla of evidence.
- 2147. — Positive or negative nature of evidence.
- 2148. Credibility of witnesses.
- 2148.1. — In general.
- 2149. — Physical facts contrary to testimony.
- 2150. Uncontroverted facts or evidence.
- 2151. Conflicting evidence.
- 2152. Conclusions or inferences from evidence.
- 2153. Particular issues.
- 2153.1. — In general.
- 2154. — Law of state or foreign country; international law.
- 2156. — Validity or construction of pleadings or documents.

**(G) INSTRUCTIONS.**

- 2171. In general.
- 2172. Invasion of jury's province.
- 2173. Necessity and subject matter.
- 2173.1. Form, requisites, and sufficiency.
  - (1). In general.
  - (2). Evidence and matters of fact.
  - (3). Reading or quoting statutes, ordinances or reported cases.
- 2174. Applicability to pleading and evidence.
- 2175. Time for giving.
- 2176. Requests.
- 2176.1. — In general; necessity.
- 2176.2. — Form and requisites.
- 2176.3. — Instructions already given.
- 2176.4. — Erroneous requests.
- 2177. Objections.
- 2177.1. — In general.
- 2178. — Necessity; waiver.
- 2179. — Sufficiency.
- 2180. Rulings on requests and objections.
- 2181. Construction and operation in general.
- 2182. Construction and effect of charge as a whole.
- 2182.1. — In general.
- 2183. — Particular issues and cases.

**XV. TRIAL.**(Cont'd)

- 2184. Error in instructions cured by withdrawal or giving other instructions.
- 2184.1. — In general.
- 2185. — Particular issues and cases.

**(H) GENERAL VERDICT.**

- 2191. In general.
- 2192. Form and sufficiency.
- 2192.1. — In general.
- 2193. — Conformity to issues; several issues.
- 2194. Amount of recovery.
- 2194.1. — In general.
- 2195. — Apportionment.
- 2196. Amendment or correction.
- 2197. Construction and operation.

**(I) INTERROGATORIES ACCOMPANYING FORMS FOR GENERAL VERDICT.**

- 2211. In general.
- 2212. Necessity and propriety.
- 2212.1. — In general.
- 2213. — Discretion of court in general.
- 2214. — Particular actions or issues.
- 2215. Form and sufficiency.
- 2216. Answers.
- 2216.1. — In general.
- 2217. — Inconsistency; conflict with general verdict.
- 2218. — Amendment or correction; additional answers.
- 2219. — Construction and operation.
- 2220. Failure to answer.

**(J) SPECIAL VERDICT.**

- 2231. In general.
- 2232. Necessity and propriety.
- 2232.1. — In general.
- 2233. — Particular actions or issues.
- 2234. Requests.
- 2234.1. — In general.
- 2235. — Time for requests.
- 2236. Form and sufficiency of questions submitted.
- 2237. Form and sufficiency of verdict.
- 2237.1. — In general.
- 2238. — Conformity to issues.
- 2239. Failure to find.
- 2240. Amendment or correction.

**170A. FEDERAL CIVIL PROCEDURE****XV. TRIAL.**(Cont'd)

- 2241. Additional findings.
- 2242. Construction and operation.

**(K) TRIAL BY COURT.****1. IN GENERAL.**

- 2251. In general.
- 2252. Advisory jury.

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- 2261. In general.
- 2262. Nature and purpose.
- 2262.1. — In general.
- 2263. — General or special nature.
- 2264. Necessity and propriety.
- 2264.1. — In general.
- 2265. — Dismissal or nonsuit.
- 2266. — Admission or stipulation as to facts.
- 2267. — Waiver.
- 2268. — Pleadings or evidence requiring.
- 2269. Actions in which findings and conclusions are required.
- 2271. Time for making.
- 2272. Requests or proposed findings.
- 2272.1. — In general.
- 2273. — Time for submission.
- 2274. — Notice.
- 2275. — Form and sufficiency.
- 2276. — Objections; counter-findings.
- 2277. — Failure to submit.
- 2278. Ruling of court on requests or proposed findings.
- 2279. Form.
- 2279.1. — In general.
- 2280. — Preparation by counsel.
- 2281. — Distinction between findings and conclusions.
- 2282. Sufficiency.
- 2282.1. — In general.
- 2283. — Completeness.
- 2284. — Conformity to pleadings, issues and proofs.
- 2285. — Definiteness and certainty.
- 2287. — Master's findings, adoption of.
- 2288. — Opinion, adoption of.
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- 2290. — Ultimate or evidentiary facts.
- 2291. Failure to find.

**XV. TRIAL.**(Cont'd)

- 2292. Inconsistency.
- 2293. Signing and filing.
- 2294. Amendment or correction.
- 2295. Additional findings or conclusions.
- 2296. Construction and operation.
- 2297. Judgment on partial findings.

**XVI. NEW TRIAL.****(A) IN GENERAL.**

- 2311. In general.
- 2313. Discretion of court.
- 2314. Partial new trial or rehearing.
- 2314.1. — In general.
- 2315. — Damages.

**(B) GROUNDS.**

- 2331. In general.
- 2332. Misconduct of parties, counsel or witnesses.
- 2333. Trial errors.
- 2333.1. — In general.
- 2334. — Evidence.
- 2335. — Argument.
- 2336. — Instructions.
- 2337. Misconduct of jury or affecting jury; disqualification.
- 2338. Verdict or findings contrary to law or evidence.
- 2338.1. — In general.
- 2339. — Weight of evidence.
- 2340. — Conflicting evidence.
- 2341. — Contract actions.
- 2342. — Tort actions.
- 2343. Amount of recovery in general.
- 2344. Inadequate damages.
- 2345. Excessive damages.
- 2345.1. — In general.
- 2346. — Contract actions.
- 2347. — Tort actions.
- 2348. Opinion or findings of court, error in.
- 2349. Surprise, accident, inadvertence or mistake.
- 2350. Newly discovered evidence.
- 2350.1. — In general.
- 2351. — Diligence.
- 2352. — Credibility; corroboration and impeachment.

**170A. FEDERAL CIVIL PROCEDURE****XVI. NEW TRIAL.**(Cont'd)

2353. — Sufficiency and probable effect of evidence.

**(C) PROCEEDINGS.**

- 2361. In general.
- 2362. Nature of proceedings.
- 2363. Parties.
- 2364. Initiative of court.
- 2366. Time for motion.
- 2366.1. — In general.
- 2367. — Newly discovered evidence.
- 2368. Motion and affidavits.
- 2368.1. — In general.
- 2369. — Joinder with other motions.
- 2370. — Service.
- 2371. Impeaching verdict.
- 2372. Hearing and determination.
- 2372.1. — In general.
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- 2374. — Questions considered.
- 2375. — Ineffectuality of new trial.
- 2376. — Effect.
- 2377. Remittitur.

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- 2391. In general.
- 2392. Requisites and validity.
- 2393. Jurisdiction to sustain judgment.
- 2394. Process or notice to sustain judgment.
- 2395. Pleadings and evidence to sustain judgment.
- 2396. By confession.
- 2396.5. Offer of judgment.
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- 2397.1. — In general.
- 2397.2. — Form and requisites; validity.
- 2397.3. — Approval hearing; entry.
- 2397.4. — Amending, opening, or vacating.
- 2397.5. — Construction and operation.
- 2397.6. — Compliance; enforcement.
- 2398. Payment and satisfaction.
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- 2411. In general.
- 2412. Actions in which default judgment is authorized.
- 2413. Persons entitled to default judgment.
- 2414. Persons who may be defaulted.
- 2415. Grounds.
- 2416. Defenses and objections.
- 2417. Entry of default.
- 2418. Proceedings for judgment.
- 2418.1. — In general.
- 2419. — Time for taking proceedings.
- 2420. — Application for judgment.
- 2421. — Assessment of damages.
- 2422. Relief awarded.
- 2423. Final judgment.

**2. SETTING ASIDE.**

- 2441. In general.
- 2442. Power of court.
- 2443. Discretion of court.
- 2444. Grounds and factors.
- 2444.1. — In general.
- 2445. — Mistake.
- 2446. — Inadvertence.
- 2447. — Surprise.
- 2448. — Excusable neglect.
- 2449. Persons entitled to relief.
- 2450. Meritorious cause of action or defense.
- 2451. Proceedings.
- 2451.1. — In general.
- 2451.5. — Time for motion.
- 2452. — Application.
- 2453. — Affidavits and other evidence.
- 2454. — Conditions of relief.
- 2455. — Order.

**(C) SUMMARY JUDGMENT.****1. IN GENERAL.**

- 2461. In general.
- 2462. Purpose.
- 2463. Scope of remedy.
- 2464. Proceedings in which judgment is authorized.
- 2465. Matters affecting right to judgment.
- 2465.1. — In general.

**170A. FEDERAL CIVIL PROCEDURE****XVII. JUDGMENT.**(Cont'd)

- 2466. — Lack of cause of action or defense.
- 2467. — Want of proper parties.
- 2468. — Bar of statute of limitations.
- 2469. — Effect of prior decision.
- 2470. — Absence of genuine issue of fact in general.
- 2470.1. — Materiality and genuineness of fact issue.
- 2470.2. — Admitted or undisputed facts; conflicting inferences or conclusions.
- 2470.3. — Issues of law.
- 2470.4. — Right to judgment as matter of law.
- 2471. — Pleading.
- 2472. Operation and effect.

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- 2481. In general.
- 2482. Accounting.
- 2483. Agriculture cases.
- 2483.5. Aliens, actions involving.
- 2484. Antitrust and price discrimination cases.
- 2484.5. Armed services, actions involving.
- 2485. Automobile cases.
- 2487. Banks, cases involving.
- 2488. Bills and notes, cases involving.
- 2489. Bonds and evidences of indebtedness, cases involving.
- 2490. Brokers, cases involving.
- 2491. Carriers and warehousemen, actions involving.
- 2491.5. Civil rights cases in general.
- 2491.6. Commodities trading, cases involving.
- 2491.7. Conspiracies, cases involving.
- 2491.8. Consumer credit, cases involving.
- 2491.9. Consumer protection and unfair trade practices, cases involving.
- 2492. Contract cases in general.
- 2493. Copyright, trademark, and unfair competition cases.  
*Patent cases, see PATENTS.*
- 2494. Customs cases.
- 2494.5. Debt collection practices, cases involving.
- 2495. Decedents' estates, cases involving.
- 2496. Divorce cases.

**XVII. JUDGMENT.**(Cont'd)

- 2497. Employees and employment discrimination, actions involving.
- 2497.1. — In general.
- 2498. — Fair Labor Standards Act cases; wages and hours regulations.
- 2498.3. Environmental law, cases involving.
- 2498.4. False claims and qui tam actions.
- 2498.5. Food and drug regulations, actions involving.
- 2498.6. Forfeitures, cases involving.
- 2498.7. Franchises and dealers, cases involving.
- 2498.8. Fraudulent conveyances, cases involving.
- 2498.9. Implied indemnification and contribution in general.
- 2499. Indian cases.
- 2500. Infants and other incompetents, cases involving.
- 2500.5. Injunction and declaratory judgment cases in general.
- 2501. Insurance cases.
- 2502. Interpleader.
- 2503. Judgments, actions on.
- 2504. Land and land use, cases involving in general.
- 2505. Landlord and tenant cases.
- 2506. Mines and minerals, cases involving.
- 2507. Mortgage cases.
- 2507.5. National emergency regulations, actions involving.
- 2507.8. Partnerships, cases involving.
- 2509. Public utility cases.
- 2509.5. Racketeering cases.
- 2509.8. Records, disclosure, and privacy, cases involving.
- 2510. Sales cases in general.
- 2510.5. Secured transactions, cases involving.
- 2511. Securities cases in general.
- 2512. Shipping and seamen, cases involving.
- 2512.5. Social security and public welfare, actions involving.
- 2513. Corporations and business organizations.
- 2514. Tax cases.
- 2515. Tort cases in general.
- 2516. Trust cases.
- 2518. Voting rights and elections, cases involving.



**170A. FEDERAL CIVIL PROCEDURE****XVII. JUDGMENT.**(Cont'd)

2519. Wiretapping and electronic surveillance, cases involving.

**3. PROCEEDINGS.**

2531. In general.  
 2532. Time for motion.  
 2533. Motion.  
 2533.1. — In general.  
 2534. — By both parties.  
 2535. Presentation of case in general.  
 2536. Affidavits.  
 2536.1. — In general.  
 2537. — Matters which may be shown.  
 2538. — Form and requisites.  
 2539. — Sufficiency of showing.  
 2540. Stipulations.  
 2541. Depositions and interrogatories.  
 2542. Evidence.  
 2542.1. — In general.  
 2543. — Presumptions.  
 2544. — Burden of proof.  
 2545. — Admissibility.  
 2546. — Weight and sufficiency.  
 2547. Hearing and determination.  
 2547.1. — In general.  
 2548. — Necessity for clear case.  
 2549. — Questions to be decided in general.  
 2550. — Questions of law.  
 2551. — Questions of law and fact.  
 2552. — Ascertaining existence of fact issue.  
 2553. — Time for consideration of motion.  
 2554. — Matters considered.  
 2555. — Consideration with other motions.  
 2556. — Findings and conclusions.  
 2557. Partial summary judgment.  
 2558. Judgment or order.  
 2559. Subsequent proceedings; reconsideration of denial of motion.

**(D) ON TRIAL OF ISSUES.**

2571. In general.  
 2572. Form and requisites of judgment.  
 2573. Determination of all issues.  
 2574. Dismissal of action.  
 2575. Separate judgment on particular claim.

**XVII. JUDGMENT.**(Cont'd)

2576. Judgment against one or more coparties.  
 2577. Judgment for or against person not a party.  
 2578. Interlocutory judgment.  
 2579. Final judgment.  
 2580. Contents of judgment.  
 2580.1. — In general.  
 2581. — Findings of fact and conclusions of law.  
 2582. Nature and extent of relief in general.  
 2583. Conformity to pleadings and proof.  
 2583.1. — In general.  
 2584. — Relief justified by facts.  
 2585. — Prayer for relief.  
 2586. Conformity to verdict or findings.  
 2587. Operation and effect of judgment.

**(E) NOTWITHSTANDING VERDICT; JUDGMENT AS MATTER OF LAW.**

2601. In general.  
 2602. Necessity for preverdict motion for judgment as matter of law; different grounds or issues.  
 2603. Grounds in general.  
 2604. Failure to make case.  
 2605. Motion for judgment.  
 2605.1. — In general.  
 2606. — Time for motion.  
 2607. — Concurrent motion for new trial.  
 2608. Evidence.  
 2608.1. — In general.  
 2609. — Construction of evidence.  
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**(F) ENTRY, RECORD AND DOCKETING.**

2621. In general.  
 2622. Direction; authority and duty to enter.  
 2623. Time for entry.  
 2623.1. — In general.  
 2624. — Stay.  
 2625. — Nunc pro tunc entry.  
 2626. Mode and sufficiency; separate document rule.  
 2627. Signature.  
 2628. Notice.

**(G) RELIEF FROM JUDGMENT.**

2641. In general.

**170B. FEDERAL COURTS****XVII. JUDGMENT.**(Cont'd)

- 2641.5. Extraordinary remedy; motion not favored.
- 2642. Judgments from which relief may be granted.
- 2643. Power of court.
- 2643.1. — In general.
- 2644. — After term.
- 2645. — Relief on court's own motion.
- 2646. Discretion of court.
- 2647. Nature and form of remedy.
- 2647.1. — In general.
- 2648. — Bill of review; equitable relief.
- 2649. — Writs of error coram nobis and coram vobis.
- 2650. Persons entitled.
- 2651. Grounds and factors.
- 2651.1. — In general.
- 2651.2. — Meritorious claims or defenses in general.
- 2651.3. — Void judgments; jurisdictional defects.
- 2651.5. — Justice; prevention of injustice.
- 2652. — Additional relief.
- 2653. — Error by court, clerk, or jury.
- 2654. — Fraud; misconduct.
- 2655. — Further evidence or argument.
- 2655.3. — Change in law or facts in general.
- 2655.5. — Judgments satisfied, released, or discharged; prospective application no longer equitable.
- 2656. — Mistake by parties; excusable neglect; surprise.
- 2656.5. — Catch-all provisions.
- 2657. Procedure.
- 2657.1. — In general.
- 2658. — Time for instituting proceedings.
- 2659. — Motion, complaint or bill.
- 2660. — Notice.
- 2661. — Objections.
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- 2671. In general.
- 2672. Perfection.
- 2673. Commencement and duration.
- 2674. Property affected.

**XVII. JUDGMENT.**(Cont'd)

- 2675. Priorities.
- 2676. Suspension.
- 2677. Foreclosure.

**170B. FEDERAL COURTS****SUBJECTS INCLUDED**

- The judicial department of the federal government
- Nature and scope of the judicial power of the United States in general
- Establishment, organization, and conduct of business of federal courts
- Their jurisdiction and procedure
- Concurrent and conflicting jurisdiction and comity between different federal courts

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Civil procedure in district courts, more especially under Federal Rules of Civil Procedure, see **FEDERAL CIVIL PROCEDURE** and specific topics
- Concurrent and conflicting jurisdiction and comity as between state and federal courts, see **COURTS**
- Declaratory judgment cases, federal jurisdiction generally and in diversity cases, and concurrent and conflicting jurisdiction, see **DECLARATORY JUDGMENT**
- Magistrates in the federal judicial system, see **UNITED STATES MAGISTRATE JUDGES**
- Particular specialized courts—
  - Bankruptcy courts, establishment, organization, jurisdiction, and procedure of, see **BANKRUPTCY I, II**
  - Court of Federal Claims, establishment, organization, jurisdiction, and procedure of, see **UNITED STATES** ⇨113.1
  - Court of International Trade, jurisdiction and procedure of, see **CUSTOMS DUTIES** ⇨84
  - District of Columbia courts, establishment, organization, jurisdiction, and procedure of, see **DISTRICT OF COLUMBIA**

**170B. FEDERAL COURTS**

dure of, see DISTRICT OF COLUMBIA  
 ⚭37 and specific procedural topics

Foreign Intelligence Surveillance Court, jurisdiction and procedure of, see WAR AND NATIONAL EMERGENCY ⚭1133

Military courts, jurisdiction and procedure of, see ARMED SERVICES ⚭154, MILITARY JUSTICE, and WAR AND NATIONAL EMERGENCY

Tax Court, jurisdiction and procedure of, see INTERNAL REVENUE XXI(E)

Territorial courts, establishment, organization, jurisdiction, and procedure of, see TERRITORIES ⚭34

Particular subjects, jurisdiction and procedure relating to—

Admiralty, see ADMIRALTY

Bankruptcy, see BANKRUPTCY

Criminal prosecutions, see CRIMINAL LAW

Judicial review of administrative proceedings, see ADMINISTRATIVE LAW AND PROCEDURE and specific topics

Transfer of cases brought in state courts to courts of the United States, see REMOVAL OF CASES

I. IN GENERAL, ⚭2001–2010.

II. JURISDICTION, POWERS, AND AUTHORITY IN GENERAL, ⚭2011–2100.

(A) IN GENERAL, ⚭2011–2050.

(B) JURISDICTION DEPENDENT ON NATURE OF PARTIES IN GENERAL, ⚭2051–2070.

(C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION IN GENERAL, ⚭2071–2100.

III. CASE OR CONTROVERSY REQUIREMENT, ⚭2101–2210.

(A) IN GENERAL, ⚭2101–2130.

(B) PARTICULAR CASES, CONTEXTS, AND QUESTIONS, ⚭2131–2190.

(C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⚭2191–2210.

IV. CASES “ARISING UNDER” FEDERAL LAW; FEDERAL-QUESTION JURISDICTION, ⚭2211–2370.

(A) IN GENERAL, ⚭2211–2230.

(B) PARTICULAR CASES, CONTEXTS, AND QUESTIONS, ⚭2231–2320.

(C) CASES ARISING UNDER THE CONSTITUTION, ⚭2321–2330.

IV. CASES “ARISING UNDER” FEDERAL LAW; FEDERAL-QUESTION JURISDICTION—Cont’d

(D) CASES ARISING UNDER TREATIES, ⚭2331–2340.

(E) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⚭2341–2370.

V. SUITS AGAINST STATES; ELEVENTH AMENDMENT AND SOVEREIGN IMMUNITY, ⚭2371–2400.

VI. CONTROVERSIES BETWEEN CITIZENS OF DIFFERENT STATES; DIVERSITY JURISDICTION, ⚭2401–2500.

(A) IN GENERAL, ⚭2401–2410.

(B) PARTICULAR CASES, CONTEXTS, AND QUESTIONS, ⚭2411–2460.

(C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⚭2461–2500.

VII. JURISDICTIONAL AMOUNT; AMOUNT IN CONTROVERSY, ⚭2501–2540.

VIII. JURISDICTION OF ENTIRE CONTROVERSY; PENDENT AND SUPPLEMENTAL JURISDICTION, ⚭2541–2570.

IX. RIGHT TO DECLINE JURISDICTION; ABSTENTION, ⚭2571–2700.

(A) IN GENERAL, ⚭2571–2590.

(B) PARTICULAR CASES, CONTEXTS, AND QUESTIONS, ⚭2591–2660.

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(D) ABSTENTION AS BETWEEN FEDERAL COURTS, ⚭2671–2680.

(E) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⚭2681–2700.

X. PERSONAL JURISDICTION, ⚭2701–2800.

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(B) ACTIONS BY OR AGAINST NON-RESIDENTS; “LONG-ARM” JURISDICTION, ⚭2721–2780.

(C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⚭2781–2800.

XI. LOCATION OF FORUM; VENUE IN GENERAL, ⚭2801–2900.

(A) IN GENERAL, ⚭2801–2810.

(B) GROUNDS; FACTORS CONSIDERED, ⚭2811–2850.

**170B. FEDERAL COURTS****XI. LOCATION OF FORUM; VENUE IN GENERAL—Cont'd**

- (C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⚭2851–2900.

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- (A) IN GENERAL; VENUE LAID IN PROPER FORUM, ⚭2901–2920.  
 (B) VENUE LAID IN WRONG FORUM, ⚭2921–2930.  
 (C) ELIGIBLE TRANSFEREE FORUMS; WHERE ACTION MIGHT HAVE BEEN BROUGHT, ⚭2931–2940.  
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- (A) IN GENERAL, ⚭3001–3020.  
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- (A) IN GENERAL, ⚭3121–3140.  
 (B) DECISIONS REVIEWABLE, ⚭3141–3170.  
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**XVII. COURTS OF APPEALS, ⚭3231–3820.**

- (A) IN GENERAL, ⚭3231–3250.  
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1. IN GENERAL, ⚭3271–3290.
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3. EFFECT OF UNRESOLVED OR PENDING ISSUES, ⚭3351–3370.
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- (I) DISMISSAL, WITHDRAWAL, OR ABANDONMENT, ⚭3511–3530.

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3. PRESUMPTIONS, ⚭3661–3680.

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- (A) IN GENERAL, ⚭3851–3860.

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2002. Establishment and organization.

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- (1). In general.

- (2). Divisions and panels.

- (3). Terms and sessions.

- (4). District of Columbia.

2005. — Other particular courts.

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**II. JURISDICTION, POWERS, AND AUTHORITY IN GENERAL.****(A) IN GENERAL.**

- 2011. In general.
- 2012. Judicial power of United States; power of Congress.
- 2013. — In general.
- 2014. — Statutory provisions in general.
- 2015. — Limited jurisdiction; jurisdiction as dependent on constitution or statutes.
- 2016. — Power of Congress to establish courts and define their jurisdiction.
- 2017. — Power of Congress to reduce or withdraw jurisdiction; statutory restrictions in general.
- 2018. — Persons or bodies who may exercise judicial power.
- 2019. — Power of states; effect of state or local law.
- 2020. Inherent powers.
- 2021. Supervisory powers.
- 2022. Power to grant relief.
- 2023. — In general.
- 2024. — Writs in general.
- 2025. — Mandamus.
- 2026. Absence or loss of jurisdiction, and effect thereof.
- 2027. Equity jurisdiction in general.
- 2028. Subject-matter jurisdiction in general.
- 2029. Substantiality doctrine in general.
- 2030. Grounds or exclusions of jurisdiction in general.
- 2031. — In general.
- 2032. — State or federal matters in general.
- 2033. — Property; in rem and quasi in rem jurisdiction.
- 2034. — Domestic relations; families and children.
- 2035. — Probate matters; wills, trusts, and estates.
- 2036. — State taxes.
- 2037. — State rate orders.

**(B) JURISDICTION DEPENDENT ON NATURE OF PARTIES IN GENERAL.**

- 2051. In general.
- 2052. Particular parties.
- 2053. — In general.  
*Suits against states, see* V. *Diversity jurisdiction, see* VI.
- 2054. — Controversies to which United States is a party.
- 2055. — Controversies between states.
- 2056. — Controversies between a state and citizens of another state.
- 2057. — Controversies between a state or citizens thereof and foreign states, citizens, or subjects.
- 2058. — Controversies between foreign parties.
- 2059. — Cases affecting ambassadors, other public ministers, or consuls.

**(C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION IN GENERAL.**

- 2071. In general.
- 2072. Necessity of objection; power and duty of court.
- 2073. — In general.
- 2074. — Sua sponte determination.
- 2075. — Jurisdiction to determine jurisdiction.
- 2076. Timeliness issues.
- 2077. Waiver, estoppel, and consent.
- 2078. Pleadings and motions.
- 2079. Evidence; affidavits.
- 2080. — In general.
- 2081. — Presumptions and burden of proof.
- 2082. — Weight and sufficiency.
- 2083. Hearing.
- 2084. Questions of law or fact.
- 2085. Findings and conclusions.
- 2086. Dismissal or other disposition.

**III. CASE OR CONTROVERSY REQUIREMENT.****(A) IN GENERAL.**

- 2101. In general.
- 2102. Justiciability in general.
- 2103. Nature of dispute; concreteness.
- 2104. Rights and interests at stake; adversity.
- 2105. Injury, harm, causation, and redress.

**170B. FEDERAL COURTS****III. CASE OR CONTROVERSY  
REQUIREMENT.(Cont'd)**

- 2106. Inception and duration of dispute; recurrence; "capable of repetition yet evading review".
- 2107. Voluntary cessation of challenged conduct.
- 2108. Mootness.
- 2109. — In general.
- 2110. — Rights and interests at stake.
- 2111. — Available and effective relief.
- 2112. — Collateral consequences.
- 2113. — Inception and duration of dispute; recurrence; "capable of repetition yet evading review".
- 2114. — Voluntary cessation of challenged conduct.
- 2115. — Change in law.
- 2116. — Prudential mootness.
- 2117. — Partial or complete mootness.
- 2118. Ripeness; prematurity.
- 2119. — In general.
- 2120. — Fitness and hardship.
- 2121. — Nature of dispute; concreteness.
- 2122. — Prudential concerns.
- 2123. — Threat of enforcement.

**(B) PARTICULAR CASES, CONTEXTS,  
AND QUESTIONS.**

- 2131. In general.
- 2132. Matters of procedure in general.
- 2133. — In general.
- 2134. — Class actions.
- 2135. — Injunctions.
- 2136. Administrative agencies and proceedings in general.
- 2137. Civil rights and discrimination in general.
- 2138. Torts in general.
- 2139. Property in general.
- 2140. — In general.
- 2141. — Wills, estates, and trusts.
- 2142. — Zoning and land use.
- 2143. — Takings and eminent domain.
- 2144. Water.
- 2145. Governments and political subdivisions.
- 2146. Government property, facilities, and funds.
- 2147. Social Security, public assistance, and other government payments.

**III. CASE OR CONTROVERSY  
REQUIREMENT.(Cont'd)**

- 2148. Taxation.
- 2149. Labor and employment.
- 2150. — In general.
- 2151. — Public employment in general.
- 2152. — Pension and benefit plans.
- 2153. — Labor relations.
- 2154. — Wages, hours, and working conditions.
- 2155. — Railway labor and employment.
- 2156. — Employment discrimination.
- 2157. Education.
- 2158. Elections, voting, and political rights.
- 2159. War, national emergency, and national security.
- 2160. Contracts.
- 2161. Trade, business, and finance.
- 2162. — In general.
- 2163. — Mortgages, liens, and security interests.
- 2164. Intellectual property.
- 2165. Environment and health.
- 2166. Mental health.
- 2167. — In general.
- 2168. — Sex offenders.
- 2169. Motor vehicles.
- 2170. Carriers and public utilities.
- 2171. — In general.
- 2172. — Telecommunications.
- 2173. Families and children.
- 2174. Aliens, immigration, and citizenship.
- 2175. Corporations and other organizations.
- 2176. Criminal justice.
- 2177. — In general.
- 2178. — Arrest and pretrial detention.
- 2179. — Imprisonment and incidents thereof.
- 2180. Search, seizure, and confiscation.
- 2181. Bankruptcy.
- 2182. Indians and Indian lands.
- 2183. Racketeering.

**(C) OBJECTIONS, PROCEEDINGS,  
AND DETERMINATION.**

- 2191. In general.
- 2192. Necessity of objection; power and duty of court.
- 2193. — In general.
- 2194. — Sua sponte determination.

**170B. FEDERAL COURTS****III. CASE OR CONTROVERSY  
REQUIREMENT.(Cont'd)**

- 2195. — Jurisdiction to determine jurisdiction.
- 2196. Timeliness issues.
- 2197. Waiver, estoppel, and consent.
- 2198. Pleadings and motions.
- 2199. Evidence; affidavits.
- 2200. — In general.
- 2201. — Presumptions and burden of proof.
- 2202. — Weight and sufficiency.
- 2203. Hearing.
- 2204. Questions of law or fact.
- 2205. Findings and conclusions.
- 2206. Dismissal or other disposition.

**IV. CASES “ARISING UNDER” FEDERAL  
LAW; FEDERAL-QUESTION  
JURISDICTION.****(A) IN GENERAL.**

- 2211. In general.
- 2212. Power to confer, expand, restrict, or withdraw federal-question jurisdiction.
- 2213. Substantiality of federal question.
- 2214. Causes of action created by federal law.
- 2215. State matters, and relation of federal matters thereto.
- 2216. — In general.
- 2217. — State-law claims and causes of action.
- 2218. — Preemption.
  - (1). In general.
  - (2). Complete preemption.
- 2219. Common law.

**(B) PARTICULAR CASES, CONTEXTS,  
AND QUESTIONS.**

- 2231. In general.
- 2232. Matters of procedure in general.
- 2233. — In general.
- 2234. — Declaratory relief in general.
- 2235. — Alternative dispute resolution in general.
- 2236. Administrative agencies and proceedings in general.
- 2237. Civil rights and discrimination in general.
- 2238. Torts in general.

**IV. CASES “ARISING UNDER” FEDERAL  
LAW; FEDERAL-QUESTION  
JURISDICTION.(Cont'd)**

- 2239. Property in general.
- 2240. — In general.
- 2241. — Land patents.
- 2242. — Wills, estates, and trusts.
- 2243. — Zoning and land use.
- 2244. — Takings and eminent domain.
- 2245. Water.
- 2246. Governments and political subdivisions.
- 2247. — In general.
- 2248. — Interstate compacts.
- 2249. — Public records or information.
- 2250. Government property, facilities, and funds.
- 2251. — In general.
- 2252. — Public lands and mineral rights.
- 2253. — Federal enclaves.
- 2254. — Postal matters.
- 2255. Social Security, public assistance, and other government payments.
- 2256. — In general.
- 2257. — Medical assistance.
- 2258. — Public housing.
- 2259. Taxation.
- 2260. Labor and employment.
- 2261. — In general.
- 2262. — Public employment in general.
- 2263. — Pension and benefit plans.
- 2264. — Labor relations.
  - (1). In general.
  - (2). Labor contracts.
  - (3). Labor organizations or officers, actions against.
  - (4). Arbitration of labor disputes.
- 2265. — Wages, hours, and working conditions.
- 2266. — Railway labor and employment.
- 2267. — Employment discrimination.
- 2268. Education.
- 2269. Elections, voting, and political rights.
- 2270. War, national emergency, and national security.
- 2271. Contracts.
- 2272. Trade or business.
- 2273. — In general.
- 2274. — Commerce.
- 2275. — Antitrust.
- 2276. — Banks and banking.



**170B. FEDERAL COURTS****IV. CASES “ARISING UNDER” FEDERAL  
LAW; FEDERAL-QUESTION  
JURISDICTION.(Cont’d)**

- 2277. — Insurers and insurance.
- 2278. — Securities regulation.
- 2279. — Mortgages, liens, and security in-  
terests.
- 2280. — Bonds executed under federal  
law.
- 2281. Intellectual property.
- 2282. — In general.
- 2283. — Copyrights.
- 2284. — Patents.
  - (1). In general.
  - (2). Title, conveyances, and contracts.
  - (3). Infringement.
  - (4). Declaratory relief.
  - (5). Other particular claims.
- 2285. — Trademarks and trade names.
- 2286. Environment and health.
- 2287. Mental health.
- 2288. — In general.
- 2289. — Sex offenders.
- 2290. Motor vehicles.
- 2291. Carriers and public utilities.
- 2292. — In general.
- 2293. — Telecommunications.
- 2294. Families and children.
- 2295. Aliens, immigration, and citizenship.
- 2296. — In general.
- 2297. — Tort claims.
- 2298. Foreign states or sovereigns.
- 2299. Corporations and other organizations.
- 2300. Criminal justice.
- 2301. — In general.
- 2302. — Arrest and pretrial detention.
- 2303. — Imprisonment and incidents  
thereof.
- 2304. Search, seizure, and confiscation.
- 2305. Bankruptcy.
- 2306. Indians and Indian lands.
- 2307. Racketeering.

**(C) CASES ARISING UNDER THE CONSTITUTION.**

- 2321. In general.
- 2322. Particular cases, contexts, and ques-  
tions.
- 2323. — In general.
- 2324. — Particular constitutional rights  
and provisions.

**IV. CASES “ARISING UNDER” FEDERAL  
LAW; FEDERAL-QUESTION  
JURISDICTION.(Cont’d)**

- (1). In general.
- (2). First Amendment.
- (3). Due process.
- (4). Equal protection.
- (5). Commerce Clause.
- (6). Impairment of contract.
- 2325. — Elections, voting, and political  
rights.
- 2326. — Criminal justice.
  - (1). In general.
  - (2). Searches and seizures.
  - (3). Arrest and pretrial detention.
  - (4). Prosecutions.
  - (5). Sentencing.
  - (6). Imprisonment and incidents there-  
of.
  - (7). Habeas corpus.

**(D) CASES ARISING UNDER TREATIES.**

- 2331. In general.
- 2332. Particular cases, contexts, and ques-  
tions.
- 2333. — In general.
- 2334. — Carriers.
- 2335. — Indians and Indian lands.

**(E) OBJECTIONS, PROCEEDINGS,  
AND DETERMINATION.**

- 2341. In general.
- 2342. Necessity of objection; power and duty  
of court.
- 2343. — In general.
- 2344. — Sua sponte determination.
- 2345. — Jurisdiction to determine jurisdic-  
tion.
- 2346. Timeliness issues.
- 2347. Waiver, estoppel, and consent.
- 2348. Pleadings and motions.
- 2349. — In general.
- 2350. — “Well-pleaded complaint” rule.
- 2351. — Particular cases.
  - (1). In general.
  - (2). Civil rights; equal protection.
  - (3). Pension and benefit plans.
  - (4). Labor relations; fair labor stan-  
dards.



**170B. FEDERAL COURTS****IV. CASES “ARISING UNDER” FEDERAL LAW; FEDERAL-QUESTION JURISDICTION.(Cont’d)**

- 2352. — Defenses and anticipation thereof.
- 2353. — Responsive pleadings; answer and counterclaim.
- 2354. — Claims for declaratory relief.
- 2355. Evidence; affidavits.
- 2356. — In general.
- 2357. — Presumptions and burden of proof.
- 2358. — Weight and sufficiency.
- 2359. Hearing.
- 2360. Questions of law or fact.
- 2361. Findings and conclusions.
- 2362. Dismissal or other disposition.

**V. SUITS AGAINST STATES; ELEVENTH AMENDMENT AND SOVEREIGN IMMUNITY.**

- 2371. In general.
- 2372. Exceptions to immunity.
- 2373. — In general.
- 2374. — Abrogation by Congress.
  - (1). In general.
  - (2). Civil rights and discrimination in general.
  - (3). Labor and employment.
  - (4). Other particular matters.
- 2375. — Waiver by state; consent.
  - (1). In general.
  - (2). By constitution or statute.
  - (3). Implied or constructive waiver or consent.
  - (4). — In general.
  - (5). — Litigation conduct.
  - (6). — Participation in federal programs.
- 2376. — In rem proceedings.
- 2377. — Suits for injunctive or other prospective or equitable relief; Ex parte Young doctrine.
- 2378. — Other particular exceptions.
- 2379. What are suits against states; entities and individuals entitled to immunity.
- 2380. — In general.
- 2381. — Arms of the state in general.
- 2382. — State legislatures and legislators.
- 2383. — Political subdivisions.

**V. SUITS AGAINST STATES; ELEVENTH AMENDMENT AND SOVEREIGN IMMUNITY.(Cont’d)**

- (1). In general.
- (2). Counties; parishes.
- (3). Municipal corporations; cities.
- (4). Port authorities.
- 2384. — Agencies, officers, and public employees.
- 2385. — Courts.
  - (1). In general.
  - (2). Judges and court personnel.
  - (3). Judicial councils.
  - (4). Receivers, executors, administrators, and other court appointees.
- 2386. — Law enforcement.
  - (1). In general.
  - (2). Sheriffs and deputies.
  - (3). Prosecutors and attorneys general.
  - (4). Public defenders.
  - (5). Prisons and jails.
  - (6). Parole boards and board members.
- 2387. — National Guard; state militia.
- 2388. — Education.
  - (1). In general.
  - (2). School boards; school districts.
  - (3). Higher education; colleges and universities.
- 2389. — Interstate compacts.
- 2390. — Territories.
- 2391. — Indians.
- 2392. — Other particular entities and individuals.
- 2393. Objections, proceedings, and determination.

**VI. CONTROVERSIES BETWEEN CITIZENS OF DIFFERENT STATES; DIVERSITY JURISDICTION.****(A) IN GENERAL.**

- 2401. In general.
- 2402. Statutory provisions in general.
- 2403. Purpose of diversity jurisdiction.
- 2404. What constitutes citizenship in general.
- 2405. — In general.
- 2406. — Domicile and residence in general.

**170B. FEDERAL COURTS****(B) PARTICULAR CASES, CONTEXTS,  
AND QUESTIONS.**

- 2411. In general.
- 2412. Particular parties, domicile or residence of in general.
- 2413. Change of domicile or residence in general.
- 2414. Students.
- 2415. Prisoners and fugitives.
- 2416. Governmental bodies and officers.
- 2417. Foreign states and citizens.
- 2418. Citizens of District of Columbia or territories.
- 2419. Citizens domiciled or residing abroad; stateless citizens.
- 2420. Indians.
- 2421. Vessels.
- 2422. Plaintiffs and codefendants; complete diversity.
- 2423. — In general.
- 2424. — Particular cases.
- 2425. — Class and derivative actions.
- 2426. — Interpleader.
- 2427. Required, necessary, or indispensable parties.
- 2428. Nominal or formal parties; real parties in interest.
- 2429. Representative or fiduciary capacity; beneficiaries.
- 2430. — In general.
- 2431. — Executors or administrators; personal representatives.
- 2432. — Guardians or conservators; guardians ad litem or next friends.
- 2433. Assignees.
- 2434. — In general.
- 2435. — Conveyance or transfer to give jurisdiction.
- 2436. Intervenor and substituted parties.
- 2437. Third-party practice.
- 2438. Corporations and other organizations.
- 2439. — In general.
- 2440. — Stockholders' citizenship.
- 2441. — Place of business.
- 2442. — Multiple citizenship.
- 2443. — Related or affiliated entities; parent and subsidiary.
- 2444. — Federally chartered organizations.
- 2445. — Banks and other financial institutions.

**VI. CONTROVERSIES BETWEEN CITIZENS  
OF DIFFERENT STATES; DIVERSITY  
JURISDICTION.(Cont'd)**

- 2446. — Insurers.
- 2447. — Unincorporated associations and partnerships.
- 2448. — Limited liability companies.
- 2449. — Residential associations.
- 2450. Improper or collusive making or joinder of parties.
- 2451. Rearrangement or realignment of parties.
- 2452. — In general.
- 2453. — Particular cases.
- 2454. Dismissal as to one or more parties.

**(C) OBJECTIONS, PROCEEDINGS,  
AND DETERMINATION.**

- 2461. In general.
- 2462. Necessity of objection; power and duty of court.
- 2463. — In general.
- 2464. — Sua sponte determination.
- 2465. — Jurisdiction to determine jurisdiction.
- 2466. Timeliness issues.
- 2467. — In general.
- 2468. — Time as of which jurisdiction determined; change of citizenship pending suit.
- 2469. Waiver, estoppel, and consent.
- 2470. Pleadings.
- 2471. — In general.
- 2472. — Particular cases and contexts.
  - (1). In general.
  - (2). Corporations or other organizations as parties.
- 2473. — Amendments.
- 2474. Motions.
- 2475. Evidence; affidavits.
- 2476. — In general.
- 2477. — Presumptions and burden of proof.
- 2478. — Weight and sufficiency.
- 2479. Hearing.
- 2480. Questions of law or fact.
- 2481. Findings and conclusions.
- 2482. Dismissal or other disposition.

**170B. FEDERAL COURTS****VII. JURISDICTIONAL AMOUNT; AMOUNT  
IN CONTROVERSY.**

- 2501. In general.
- 2502. Cases subject to pecuniary limitation.
- 2503. — In general.
- 2504. — Actions arising under federal constitution and laws in general.
- 2505. — Civil rights.
- 2506. — Labor and employment; seamen and longshoremen.
- 2507. Requisite amount or value.
- 2508. Matter in dispute and amount or value claimed or involved.
- 2509. — In general.
- 2510. — Punitive damages.
- 2511. — Interest and costs; attorney fees.
- 2512. — Penalties.
- 2513. Particular cases, claim or value.
- 2514. — In general.
- 2515. — Contract and tort claims.
- 2516. — Warranty claims.
- 2517. — Insurance claims.
- 2518. — Claims for declaratory or injunctive relief.
- 2519. — Arbitration.
- 2520. Aggregation or joinder of claims or demands.
- 2521. — In general.
- 2522. — Multiple parties, claims by or against in general.
- 2523. — Particular claims or demands.
  - (1). In general.
  - (2). Representative or class actions.
  - (3). Husband and wife or parent and child, claims by.
  - (4). Insurance claims.
- 2524. Fictitious or colorable claims.
- 2525. — In general.
- 2526. — Particular claims as fictitious or colorable.
- 2527. Part payment or reduction from other cause; effect of counterclaim.
- 2528. Effect of amount of recovery.
- 2529. Objections, proceedings, and determination.
- 2530. — In general.
- 2531. — Pleadings.
  - (1). In general.
  - (2). Particular cases.
- 2532. — Evidence; affidavits.

**VII. JURISDICTIONAL AMOUNT; AMOUNT  
IN CONTROVERSY.(Cont'd)**

- (1). In general.
- (2). Presumptions and burden of proof.
- (3). Weight and sufficiency.

**VIII. JURISDICTION OF ENTIRE CONTRO-  
VERSY; PENDENT AND SUPPLE-  
MENTAL JURISDICTION.**

- 2541. In general.
- 2542. Ancillary and incidental jurisdiction in general.
- 2543. Particular claims or causes of action.
- 2544. — In general.
- 2545. — Contract claims.
- 2546. — Tort claims.
- 2547. — State constitutional claims.
- 2548. — Claims under statutes, ordinances, or regulations.
- 2549. — Claims under foreign law.
- 2550. — Antitrust, unfair competition, and trade secret claims.
- 2551. Particular motions or proceedings.
- 2552. — In general.
- 2553. — Settlements.
- 2554. — Remedies and enforcement of judgment.
- 2555. — Relief from judgment.
- 2556. — Costs and fees.
- 2557. — Receivers.
- 2558. Coparties and new parties.
- 2559. — In general.
- 2560. — Pendent party jurisdiction.
- 2561. — Joinder and intervention.
- 2562. — Class actions.
- 2563. Counterclaims, cross-claims, and third-party practice.
- 2564. Effect of dismissal or other elimination of federal claims.
- 2565. Objections, proceedings, and determination.

**IX. RIGHT TO DECLINE JURISDICTION;  
ABSTENTION.**

*Forum non conveniens, see XIV.*

**(A) IN GENERAL.**

- 2571. In general.
- 2572. Discretion of court.

**170B. FEDERAL COURTS****IX. RIGHT TO DECLINE JURISDICTION;  
ABSTENTION.(Cont'd)**

- 2573. Constitutional and federal questions.
- 2574. Federal-state relations, questions of state law, and parallel state proceedings.
- 2575. Pullman abstention.
- 2576. Burford abstention.
- 2577. Thibodaux abstention.
- 2578. Younger abstention.
- 2579. Colorado River abstention.

**(B) PARTICULAR CASES, CONTEXTS,  
AND QUESTIONS.**

- 2591. In general.
- 2592. Matters of procedure in general.
- 2593. — In general.
- 2594. — Class actions.
- 2595. — Declaratory judgment.
- 2596. — Injunctions.
- 2597. — Alternative dispute resolution.
- 2598. Civil rights and discrimination in general.
- 2599. Particular constitutional rights in general.
- 2600. Torts in general.
- 2601. Property in general.
- 2602. — In general.
- 2603. — Wills, estates, and trusts.
- 2604. — Zoning and land use.
- 2605. — Takings and eminent domain.
- 2606. Water.
- 2607. Governments and political subdivisions.
- 2608. Government property, facilities, and funds.
- 2609. Social Security, public assistance, and other government payments.
- 2610. Taxation.
- 2611. Labor and employment.
- 2612. — In general.
- 2613. — Public employment in general.
- 2614. — Pension and benefit plans.
- 2615. — Labor relations.
- 2616. — Wages, hours, and working conditions.
- 2617. — Railway labor and employment.
- 2618. — Employment discrimination.
- 2619. Education.
- 2620. Elections, voting, and political rights.
- 2621. — In general.

**IX. RIGHT TO DECLINE JURISDICTION;  
ABSTENTION.(Cont'd)**

- 2622. — Reapportionment.
- 2623. War, national emergency, and national security.
- 2624. Contracts.
- 2625. Trade, business, and finance.
- 2626. — In general.
- 2627. — License and regulation of occupations.
  - (1). In general.
  - (2). Professional or other services; malpractice.
  - (3). Liquor; public amusement and entertainment.
- 2628. — Antitrust.
- 2629. — Banks and banking.
- 2630. — Insurers and insurance.
- 2631. — Securities regulation.
- 2632. — Mortgages, liens, and security interests.
- 2633. Intellectual property.
- 2634. Environment and health.
- 2635. Mental health.
- 2636. — In general.
- 2637. — Sex offenders.
- 2638. Motor vehicles.
- 2639. Carriers and public utilities.
- 2640. — In general.
- 2641. — Telecommunications.
- 2642. Families and children.
- 2643. Aliens, immigration, and citizenship.
- 2644. Corporations and other organizations.
- 2645. Criminal justice.
- 2646. — In general.
- 2647. — Arrest and pretrial detention.
- 2648. — Imprisonment and incidents thereof.
- 2649. Search, seizure, and confiscation.
- 2650. Bankruptcy.
- 2651. Indians and Indian lands.
- 2652. Racketeering.

**(C) FEDERAL-FOREIGN RELATIONS AND QUESTIONS OF FOREIGN LAW; INTERNATIONAL  
ABSTENTION AND COMITY.**

- 2661. In general.
- 2662. Particular cases, contexts, and questions.

**170B. FEDERAL COURTS****(D) ABSTENTION AS BETWEEN FEDERAL COURTS.**

- 2671. In general.
- 2672. Particular cases, contexts, and questions.

**(E) OBJECTIONS, PROCEEDINGS, AND DETERMINATION.**

- 2681. In general.
- 2682. Necessity of objection; power and duty of court.
- 2683. — In general.
- 2684. — Sua sponte determination.
- 2685. Timeliness issues.
- 2686. Waiver, estoppel, and consent.
- 2687. Pleadings and motions.
- 2688. Evidence; affidavits.
- 2689. — In general.
- 2690. — Presumptions and burden of proof.
- 2691. — Weight and sufficiency.
- 2692. Hearing.
- 2693. Questions of law or fact.
- 2694. Findings and conclusions.
- 2695. Dismissal or other disposition.
- 2696. — In general.
- 2697. — Stay.
- 2698. — Reservation or retention of jurisdiction.

**X. PERSONAL JURISDICTION.**

*For personal jurisdiction issues arising in special proceedings, see ALTERNATIVE DISPUTE RESOLUTION, FORFEITURES, INTERPLEADER, and other specific topics.*

**(A) IN GENERAL.**

- 2701. In general.
- 2702. Necessity.
- 2703. How established; grounds.
- 2704. — In general.
- 2705. — Presence.
  - (1). In general.
  - (2). Physical presence.
  - (3). Domicile or residence.
- 2706. — Notice.
 

*See also APPEARANCE and PROCESS.*
- 2707. Particular cases, contexts, and questions.
- 2708. — In general.
- 2709. — Class actions.
- 2710. — Jurisdiction over nonparties.

**(B) ACTIONS BY OR AGAINST NONRESIDENTS; “LONG-ARM” JURISDICTION.**

- 2721. In general.
- 2722. Factors considered in general.
- 2723. — In general.
- 2724. — Contacts with forum.
  - (1). In general.
  - (2). Nature, number, frequency, and extent of contacts and activities.
  - (3). Purpose, intent, and foreseeability; purposeful availment.
- 2725. — Contacts with United States as a whole; nationwide jurisdiction.
- 2726. — Connection with litigation.
  - (1). In general.
  - (2). Unrelated contacts and activities; general jurisdiction.
  - (3). Related contacts and activities; specific jurisdiction.
- 2727. — Commercial contacts and activities; contracts and transactions.
  - (1). In general.
  - (2). Business contacts and activities; transacting or doing business.
- 2728. — Internet use.
- 2729. Particular nonresident entities.
- 2730. — In general.
- 2731. — Associations and organizations.
- 2732. — Corporations and business organizations.
- 2733. — Unincorporated business organizations.
- 2734. — Limited liability companies.
- 2735. — Partnerships and joint ventures.
- 2736. — Non-profit corporations and organizations.
- 2737. Particular contexts and causes of action.
- 2738. — In general.
- 2739. — Property disputes; wills, trusts, and estates.
- 2740. — Contract disputes.
- 2741. — Torts in general.
 

*Personal injury claims by seamen, see SEAMEN ¶29(5.5).*
- 2742. — Automobile accidents; nonresident motorists.
- 2743. — Manufacture, distribution, and sale of products.
  - (1). In general.

**170B. FEDERAL COURTS****X. PERSONAL JURISDICTION.**(Cont'd)

- (2). Defective, dangerous, or injurious products; products liability.
- 2744. — Defamation.
- 2745. — Fraud, racketeering, and deceptive practices.  
*Antitrust claims, see ANTITRUST AND TRADE REGULATION* ¶969(2).
- 2746. — Professional services; malpractice.
- 2747. — Investment, finance, and credit.
- 2748. — Banks and banking.
- 2749. — Insurers and insurance.
- 2750. — Civil rights and discrimination.
- 2751. — Labor and employment.
  - (1). In general.
  - (2). Employment discrimination.
- 2752. — Trade secrets and intellectual property.  
*Copyright validity and infringement, see COPYRIGHTS AND INTELLECTUAL PROPERTY* ¶79(2). *Patent validity and infringement, see PATENTS* ¶288. *Trademark claims, see TRADEMARKS* ¶1558.5, 1559, 1560.
- 2753. Agents, representatives, and other third parties.
- 2754. — In general.
- 2755. — Particular entities, contexts, and causes of action.
  - (1). In general.
  - (2). Associations and organizations.
  - (3). Corporations and business organizations.
  - (4). Unincorporated business organizations.
  - (5). Limited liability companies.
  - (6). Partnerships and joint ventures.
  - (7). Non-profit corporations and organizations.
  - (8). Banks and banking.
  - (9). Insurers and insurance.
- 2756. — Jurisdiction of agents and representatives.
  - (1). In general.
  - (2). Fiduciary duties in general; fiduciary shield.
  - (3). Tortious or intentional conduct; fraud and breach of fiduciary duties.
  - (4). Particular relationships.
  - (5). — In general.

**X. PERSONAL JURISDICTION.**(Cont'd)

- (6). — Shareholders, members, or other individual owners of entities.
  - (7). — Officers, directors, and employees.
  - (8). — Public officers and employees; Bivens claims.
  - (9). — Conspiracy and co-conspirators.
  - 2757. Related or affiliated entities; parent and subsidiary.
  - 2758. Aliens and alien entities.
  - 2759. — In general; factors considered.
  - 2760. — Particular entities, contexts, and causes of action.  
*Foreign Sovereign Immunities Act, see INTERNATIONAL LAW VI.*
    - (1). In general.
    - (2). Terrorism.
  - 2761. — Agents, representatives, and other third parties.
    - (1). In general.
    - (2). Jurisdiction of agents and representatives.
    - (3). Conspiracy and co-conspirators.
  - 2762. — Related or affiliated entities; parent and subsidiary.
  - 2763. Change of residence; actions against former residents.
  - 2764. Plaintiff's residence; nonresident plaintiffs.
  - 2765. — In general.
  - 2766. — Actions between nonresidents.
  - 2767. Mode of acquiring or exercising jurisdiction over nonresidents.  
*See also APPEARANCE and PROCESS.*
  - 2768. Pendent personal jurisdiction.
- (C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION.**
- 2781. In general.
  - 2782. Necessity of objection; power and duty of court.
  - 2783. — In general.
  - 2784. — Sua sponte determination.
  - 2785. — Jurisdiction to determine personal jurisdiction.
  - 2786. Timeliness issues.
  - 2787. Waiver, estoppel, and consent.
  - 2788. Pleadings and motions.

**170B. FEDERAL COURTS****X. PERSONAL JURISDICTION.**(Cont'd)

- 2789. Evidence; affidavits.
- 2790. — In general.
- 2791. — Presumptions and burden of proof.
- 2792. — Weight and sufficiency.
- 2793. Hearing.
- 2794. Questions of law or fact.
- 2795. Findings and conclusions.
- 2796. Dismissal or other disposition.

**XI. LOCATION OF FORUM;  
VENUE IN GENERAL.**

*See also venue lines in specific topics, particularly for venue issues arising in special proceedings or under special venue statutes.*

**(A) IN GENERAL.**

- 2801. In general; relation to jurisdiction.
- 2802. Statutory provisions.

**(B) GROUNDS; FACTORS CONSIDERED.**

- 2811. In general.
- 2812. Diversity or federal question jurisdiction, effect of in general.
- 2813. Convenience in general.
- 2814. Availability of other district in general.
- 2815. Factors concerning parties.
- 2816. — In general.
- 2817. — Convenience of parties.
- 2818. — Plaintiff's choice of forum.
- 2819. — Parties' residence, domicile, or other connection to forum.
  - (1). In general.
  - (2). Plaintiffs in general.
  - (3). Defendants in general.
  - (4). Corporations and other entities.
  - (5). — In general.
  - (6). — Associations and unincorporated business organizations.
  - (7). — Partnerships.
  - (8). — Entities as plaintiffs.
  - (9). Prisoners and inmates.
  - (10). Executors and administrators; trusts and trustees; receivers.
  - (11). Public officials and employees.
  - (12). Other particular parties.
- 2820. — Place where defendant is found or is subject to personal jurisdiction.
- 2821. — Coparties in multiple districts.

**XI. LOCATION OF FORUM; VENUE  
IN GENERAL.**(Cont'd)

- (1). In general.
- (2). Codefendants.
- (3). Class actions.
- 2822. Factors concerning claim or cause of action.
- 2823. — In general.
- 2824. — Events or omissions giving rise to claim; where claim arose; transactional venue.
  - (1). In general.
  - (2). Evidence and witnesses.
  - (3). Claims arising in multiple districts.
- 2825. — Particular claims or causes of action.
 

*See also venue lines in specific topics.*

  - (1). In general.
  - (2). Contract disputes.
  - (3). Torts in general.
  - (4). Automobile accidents; nonresident motorists.
  - (5). Manufacture, distribution, and sale of products.
  - (6). — In general.
  - (7). — Defective, dangerous, or injurious products; products liability.
  - (8). Defamation.
  - (9). Fraud, racketeering, and deceptive practices.
  - (10). Professional services; malpractice.
  - (11). Investment, finance, and credit.
  - (12). Banks and banking.
  - (13). Insurers and insurance.
  - (14). Civil rights and discrimination.
  - (15). Labor and employment.
  - (16). — In general.
  - (17). — Employment discrimination.
  - (18). Trade secrets and intellectual property.
- 2826. Actions concerning property.
- 2827. — In general.
- 2828. — In rem and quasi in rem actions.
- 2829. — Local actions.
- 2830. Multiple claims.
- 2831. — In general.
- 2832. — Pendent venue.

**170B. FEDERAL COURTS****XI. LOCATION OF FORUM; VENUE  
IN GENERAL.**(Cont'd)

- 2833. Additional parties and ancillary claims.
- 2834. Aliens and those not resident in United States.
- 2835. — In general.
- 2836. — Resident aliens.
- 2837. — Alien plaintiffs.
- 2838. Multiple districts within state or divisions within district.
- 2839. — In general.
- 2840. — Corporations and other entities.
- 2841. Other particular grounds or factors.

**(C) OBJECTIONS, PROCEEDINGS,  
AND DETERMINATION.**

- 2851. In general.
- 2852. Necessity of objection; power and duty of court.
- 2853. — In general.
- 2854. — Sua sponte determination.
- 2855. — Jurisdiction to determine venue.
- 2856. Timeliness issues.
- 2857. Waiver, estoppel, and consent.
- 2858. Pleadings and motions.
- 2859. Evidence; affidavits.
- 2860. — In general.
- 2861. — Presumptions and burden of proof.
- 2862. — Weight and sufficiency.
- 2863. Hearing.
- 2864. Questions of law or fact.
- 2865. Findings and conclusions.
- 2866. Dismissal or other disposition.

**XII. CHANGE OR TRANSFER OF VENUE.****(A) IN GENERAL; VENUE LAID IN PROPER FORUM.**

- 2901. In general.
- 2902. Jurisdiction and power to transfer; consent and waiver.
- 2903. Discretion of court.
- 2904. Factors considered.
- 2905. — In general; convenience, fairness, and interest of justice.
- 2906. — Plaintiff's choice of forum; forum shopping.
- 2907. Particular determinations.
- 2908. — In general.
- 2909. — Antitrust cases.

**XII. CHANGE OR TRANSFER  
OF VENUE.**(Cont'd)

- 2910. — Automobiles and aviation.
- 2911. — Contracts; insurance; sales.
- 2912. — Patents, copyrights, and trade regulation.
- 2913. — Seamen and maritime matters.
- 2914. — Securities regulation and internal corporate affairs.
- 2915. — Torts in general.

**(B) VENUE LAID IN WRONG FORUM.**

- 2921. In general.
- 2922. Particular determinations.

**(C) ELIGIBLE TRANSFEREE FORUMS; WHERE  
ACTION MIGHT HAVE BEEN BROUGHT.**

- 2931. In general; necessity.
- 2932. How determined.
- 2933. — In general.
- 2934. — Amenability to process and personal jurisdiction.
- 2935. Particular determinations.

**(D) PROCEEDINGS AND EFFECT OF CHANGE.**

- 2941. In general.
- 2942. Time for application.
- 2943. Affidavits and evidence in general.
- 2944. Presumptions and burden of proof.
- 2945. Ruling or order and effect of change.
- 2946. Proceedings by transferee court; improper change.

**XIII. MULTI-DISTRICT LITIGATION;  
TRANSFER FOR PRE-TRIAL  
PROCEEDINGS.**

- 2951. In general.
- 2952. Particular transferable cases.
- 2953. — In general.
- 2954. — Antitrust cases.
- 2955. — Aviation cases.
- 2956. — Patents, copyrights and trade regulation.
- 2957. — Securities regulation and internal corporate affairs.
- 2958. Effect of transfer and subsequent proceedings.

**XIV. FORUM NON CONVENIENS.**

- 2971. In general.



**170B. FEDERAL COURTS****XIV. FORUM NON CONVENIENS.(Cont'd)**

- 2972. Discretion in general.
- 2973. Parties' choice of forum; forum-shopping.
- 2974. Place of accrual of cause of action.
- 2975. Residency of parties; state of incorporation.
- 2976. Convenience of parties and witnesses; location of evidence.
- 2977. Burden placed on court and public.
- 2978. Conflict of laws.
- 2979. Public and private interests; balancing interests.
- 2980. Alternate forum.
- 2981. — In general.
- 2982. — Availability and adequacy.
- 2983. — Amenability to process.
- 2984. — Enforceability of judgment in alternate forum.
- 2985. — Scope and effect of pending proceedings.
- 2986. Objections, proceedings, and determination.
- 2987. — In general.
- 2988. — Necessity of objection; power and duty of court.
  - (1). In general.
  - (2). Sua sponte determination.
- 2989. — Timeliness issues.
- 2990. — Waiver, estoppel, and consent.
- 2991. — Pleadings and motions.
- 2992. — Evidence; affidavits.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Weight and sufficiency.
- 2993. — Hearing.
- 2994. — Questions of law or fact.
- 2995. — Findings and conclusions.
- 2996. — Disposition.
  - (1). In general.
  - (2). Conditions precedent.
  - (3). Form and sufficiency of order.
  - (4). Denial, dismissal, or transfer.
  - (5). Reconsideration.

**XV. STATE OR FEDERAL LAWS AS RULES OF DECISION; ERIE DOCTRINE.****(A) IN GENERAL.**

- 3001. In general.

**XV. STATE OR FEDERAL LAWS AS RULES OF DECISION; ERIE DOCTRINE.(Cont'd)**

- 3002. Diversity jurisdiction in general.
- 3003. Supplemental jurisdiction in general.
- 3004. Equitable jurisdiction in general.
- 3005. Substance or procedure; determinativeness.
- 3006. Sources of authority.
- 3007. — In general.
- 3008. — State courts and their decisions in general.
  - (1). In general.
  - (2). Highest court.
  - (3). Inferior courts.
- 3009. — Dicta.
- 3010. — State constitutions, statutes, regulations, and ordinances.
- 3011. Federal rules of decision.
- 3012. — In general.
- 3013. — Federal constitution, treaties, and statutes.
- 3014. — Incorporation or adoption of state law by federal law.
- 3015. — State court decisions interpreting or applying federal law.
- 3016. Matters of general jurisprudence; common law.
- 3017. — In general.
- 3018. — Federal common law.

**(B) APPLICATION TO PARTICULAR MATTERS.**

- 3021. In general.
- 3022. Procedural matters.
- 3023. — In general.
- 3024. — Dismissal or nonsuit in general.
- 3025. — Jurisdiction.
  - (1). In general.
  - (2). Case or controversy; mootness and ripeness.
  - (3). Abstention.
  - (4). Personal jurisdiction.
  - (5). Removability; fraudulent joinder to prevent removal.
- 3026. — Venue.
  - (1). In general; local action doctrine.
  - (2). Change or transfer of venue.
- 3027. — Forum non conveniens.
- 3028. — Abatement and revival.
- 3029. — Conflict of laws; choice of law.
  - (1). In general.

**170B. FEDERAL COURTS****XV. STATE OR FEDERAL LAWS AS RULES  
OF DECISION; ERIE DOCTRINE.(Cont'd)**

- (2). Particular cases, contexts, and questions.
- 3030. — Preemption.
- 3031. — Parties; capacity to sue.
  - (1). In general.
  - (2). Standing.
  - (3). Class actions.
- 3032. — Process; notice of claim.
- 3033. — Pleading.
  - (1). In general.
  - (2). Anti-SLAPP laws.
  - (3). Affirmative defenses.
- 3034. — Limitations and laches.
  - (1). In general.
  - (2). Diversity cases in general.
  - (3). Federally created rights.
  - (4). Supplemental jurisdiction.
  - (5). Civil rights and discrimination cases.
  - (6). Securities regulation actions.
  - (7). Computation and tolling.
- 3035. — Estoppel and waiver.
- 3036. — Depositions and discovery.
- 3037. — Continuance and stay.
- 3038. — Judges.
- 3039. — Jury.
  - (1). In general.
  - (2). Selection and impaneling of jurors.
  - (3). Right to jury trial and waiver of right.
- 3040. — Counsel.
- 3041. — Trial.
- 3042. — Evidence.
  - (1). In general.
  - (2). Presumptions, inferences, and burden of proof.
  - (3). Admissibility.
  - (4). Weight and sufficiency.
- 3043. — Witnesses.
  - (1). In general.
  - (2). Privilege and confidentiality.
- 3044. — Expert evidence and witnesses.
- 3045. — Judgment; orders.
  - (1). In general.
  - (2). Judgment by confession or consent.

**XV. STATE OR FEDERAL LAWS AS RULES  
OF DECISION; ERIE DOCTRINE.(Cont'd)**

- (3). Judgment by default and opening thereof.
- (4). Declaratory judgment.
- (5). Summary judgment.
- (6). Conclusiveness; res judicata and collateral estoppel.
- (7). Execution and enforcement.
- 3046. — Taking case from jury; judgment as a matter of law.
- 3047. — New trial, rehearing, or reconsideration.
- 3048. — Altering, amending, modifying, or vacating judgment or order.
- 3049. — Appealability; standard of review.
- 3050. — Indigent parties; proceedings in forma pauperis.
- 3051. — Sanctions.
  - (1). In general.
  - (2). Discovery sanctions.
- 3052. — Compromise, settlement, and release.
- 3053. — Alternative dispute resolution.
- 3054. Remedial matters.
- 3055. — In general.
- 3056. — Election of remedies.
- 3057. — Damages or other monetary relief.
  - (1). In general.
  - (2). Punitive or exemplary damages.
- 3058. — Equity and equitable relief in general.
- 3059. — Appointment of receiver or guardian ad litem.
- 3060. — Injunction.
  - (1). In general.
  - (2). Preliminary injunction; temporary restraining order.
- 3061. — Costs and attorney fees.
- 3062. — Interest.
- 3063. Substantive matters.
- 3064. — In general.
- 3065. — Principal and agent relationship in general.
- 3066. — Constitutional rights, civil rights, and discrimination in general.
- 3067. — Torts.
  - (1). In general.

**170B. FEDERAL COURTS****XV. STATE OR FEDERAL LAWS AS RULES  
OF DECISION; ERIE DOCTRINE.(Cont'd)**

- (2). Negligence, personal injuries, and death.
- (3). Products liability.
- 3068. — Indemnity and contribution.
- 3069. — Property.
  - (1). In general.
  - (2). Deeds and leases.
  - (3). Mineral interests and easements.
  - (4). Replevin.
  - (5). Wills, estates, and trusts.
  - (6). Takings and eminent domain.
  - (7). Zoning and land use.
- 3070. — Water.
- 3071. — Government and political subdivisions.
  - (1). In general.
  - (2). Immunity.
- 3072. — Social security, public assistance, and other government payments.
- 3073. — Taxation.
- 3074. — Labor and employment.
  - (1). In general.
  - (2). Public employment in general.
  - (3). Pension and benefit plans.
  - (4). Labor relations.
  - (5). Arbitration of labor disputes.
  - (6). Wages, hours, and working conditions.
  - (7). Railway labor and employment.
  - (8). Employment discrimination.
  - (9). Workers' compensation.
- 3075. — Education.
- 3076. — Elections, voting, and political rights.
- 3077. — War, national emergency, and national security.
- 3078. — Contracts, sales, and assignments.
  - (1). In general.
  - (2). Public contracts.
  - (3). Federal contractors' bonds.
  - (4). Agreement as to place of bringing suit; forum selection clauses.
- 3079. — Trade, business, and finance.
  - (1). In general.
  - (2). Commerce.
  - (3). Warranties.

**XV. STATE OR FEDERAL LAWS AS RULES  
OF DECISION; ERIE DOCTRINE.(Cont'd)**

- (4). Antitrust, unfair competition, and consumer protection.
- (5). Banks and banking.
- (6). Insurers and insurance.
- (7). Securities regulation.
- (8). Mortgages, liens, bills, notes, security interests, and debt collection.
- (9). Bonds.
- 3080. — Intellectual property.
- 3081. — Environment and health.
- 3082. — Mental health.
- 3083. — Motor vehicles.
- 3084. — Carriers and public utilities.
  - (1). In general.
  - (2). Aviation.
  - (3). Railroads.
  - (4). Telecommunications.
- 3085. — Families and children.
- 3086. — Aliens, immigration, and citizenship.
- 3087. — Corporations and other organizations.
- 3088. — Criminal justice.
  - (1). In general.
  - (2). Arrest and pretrial detention.
  - (3). Prosecutions.
  - (4). Sentencing.
  - (5). Imprisonment and incidents thereof.
- 3089. — Search, seizure, and confiscation.
- 3090. — Habeas corpus.
- 3091. — Forfeiture.
- 3092. — Indians and Indian lands.
- 3093. — Racketeering.

**(C) UNSETTLED OR UNDECIDED QUESTIONS.**

- 3101. In general.
- 3102. Conflicting and obsolete decisions; change of law.
- 3103. Anticipating or predicting state decision.
- 3104. Sources of authority; assumptions permissible.
- 3105. Withholding decision; certifying questions.
- 3106. — In general.
- 3107. — Particular questions.

**170B. FEDERAL COURTS****XV. STATE OR FEDERAL LAWS AS RULES OF DECISION; ERIE DOCTRINE.(Cont'd)**

3108. — Proceedings following certification.

**XVI. SUPREME COURT.****(A) IN GENERAL.**

- 3121. In general; establishment and organization.
- 3122. Jurisdiction, powers, and authority in general.
- 3123. Original jurisdiction.
- 3124. — In general.
- 3125. — Procedure in exercise thereof.
- 3126. Supervisory jurisdiction; writs in aid of jurisdiction.
- 3127. Certified questions.
- 3128. Appellate jurisdiction in general.
- 3129. Certiorari jurisdiction in general.
- 3130. — In general.
- 3131. — Effect of grant or refusal.
- 3132. Case or controversy requirement; justiciability; mootness and ripeness.

**(B) DECISIONS REVIEWABLE.**

- 3141. In general.
- 3142. Important, novel, or recurring questions in general.
- 3143. Conflicting decisions in general.
- 3144. Particular cases, contexts, and questions.
- 3145. — In general.
- 3146. — Criminal matters.
- 3147. — Habeas corpus.
- 3148. — Labor relations and standards; employers' liability.
- 3149. Review of federal district courts.
- 3150. — In general; decisions directly appealable.
- 3151. — Criminal prosecutions in general.
- 3152. — Actions by United States; Expediting Act.
- 3153. — Three-judge courts.
- 3154. — Constitutional questions.
- 3155. Review of specialized federal courts.
- 3156. — In general.
- 3157. — Court of Claims.
- 3158. — Former Circuit Courts (abolished in 1911).

**XVI. SUPREME COURT.(Cont'd)**

- 3159. Review of territorial courts.
- 3160. Review of District of Columbia courts.
- 3161. Review of state courts.
- 3162. — In general.
- 3163. — Necessity and sufficiency of federal question in general.
- 3164. — Particular cases, contexts, and questions.
  - (1). In general.
  - (2). Validity of state constitution or statutes.
  - (3). Criminal matters.
  - (4). Habeas corpus.

**(C) FINALITY OF DETERMINATION BELOW.**

- 3171. In general.
- 3172. Review of federal district courts.
- 3173. Review of specialized federal courts.
- 3174. Review of territorial courts.
- 3175. Review of District of Columbia courts.
- 3176. Review of state courts.

**(D) PRESENTATION OF QUESTIONS BELOW OR ON REVIEW; RECORD; WAIVER.**

- 3181. In general.
- 3182. Review of federal district courts.
- 3183. Review of specialized federal courts.
- 3184. Review of territorial courts.
- 3185. Review of District of Columbia courts.
- 3186. Review of state courts.

**(E) PROCEEDINGS.**

- 3191. In general.
- 3192. Proceedings to obtain review.
- 3193. — In general.
- 3194. — Review of federal district courts.
- 3195. — Review of specialized federal courts.
- 3196. — Review of territorial courts.
- 3197. — Review of District of Columbia courts.
- 3198. — Review of state courts.
- 3199. Proceedings in forma pauperis.
- 3200. Persons entitled to seek review or assert arguments; parties.
- 3201. Cross-appeal or cross-petition.
- 3202. Briefs and oral argument.
- 3203. Scope and extent of review.
- 3204. — In general.

**170B. FEDERAL COURTS****XVI. SUPREME COURT.(Cont'd)**

- 3205. — Review of federal district courts.
- 3206. — Review of specialized federal courts.
- 3207. — Review of territorial courts.
- 3208. — Review of District of Columbia courts.
- 3209. — Review of state courts.
  - (1). In general.
  - (2). Questions of fact, verdicts, and findings.
- 3210. Harmless or reversible error.
- 3211. Determination and disposition of cause.
- 3212. — In general.
- 3213. — Dismissal or other summary disposition.
  - (1). In general.
  - (2). Improvident grant of review.
  - (3). Grant, vacate, remand (GVR) orders.
- 3214. — Affirmance.
- 3215. — Modification.
- 3216. — Reversal, vacation, and remand.
  - (1). In general.
  - (2). Particular cases.
- 3217. — Rehearing.
- 3218. — Mandate; effect of decision in lower court; proceedings on remand.
- 3219. Stay pending review or disposition by Supreme Court.
- 3220. — In general.
- 3221. — Stay by lower court.
- 3222. Single justice orders.

**XVII. COURTS OF APPEALS.****(A) IN GENERAL.**

- 3231. In general; creation and constitution.
- 3232. Rules and conduct of business.
- 3233. Supervisory jurisdiction in general.
- 3234. Remedial writs in general.
- 3235. Injunction or restraining order.
- 3236. Mandamus.  
*See also MANDAMUS. Prohibition, see PROHIBITION.*
- 3237. — In general.
- 3238. — Particular cases, contexts, and questions.
- 3239. — Orders relating to removal, transfer, or venue.

**(B) APPELLATE JURISDICTION AND PROCEDURE IN GENERAL.**

- 3251. In general.
- 3252. Determination of question of jurisdiction.
- 3253. Persons entitled to seek review or assert arguments; parties; standing.
- 3254. — In general.
- 3255. — Particular persons.
- 3256. — Asserting claims of others.
- 3257. — Intervention or addition of new parties on appeal.
- 3258. — Appellees; necessity of filing cross-appeal.
- 3259. Estoppel to allege error; invited error.
- 3260. — In general.
- 3261. — Particular errors.
- 3262. Amendments and additional proofs.

**(C) DECISIONS REVIEWABLE.****1. IN GENERAL.**

- 3271. In general.
- 3272. Appeal as of right in general.
- 3273. Courts or other decision-makers subject to review.
- 3274. Finality.
- 3275. — In general; necessity.
- 3276. — What constitutes finality in general.
- 3277. Interlocutory and collateral orders.
- 3278. — In general.
- 3279. — Discretion in allowing interlocutory appeals in general.
- 3280. Mode of rendition or entry.

**2. PARTICULAR DECISIONS, MATTERS, OR QUESTIONS AS REVIEWABLE.**

- 3291. In general.
- 3292. Dismissal or nonsuit in general.
- 3293. Defenses in general.
- 3294. Jurisdiction, venue, and forum non conveniens.
- 3295. Immunity.
- 3296. Conditions precedent.
- 3297. Parties and process.
- 3298. — In general.
- 3299. — Class actions.
- 3300. Pleading.
- 3301. — In general.

**170B. FEDERAL COURTS****XVII. COURTS OF APPEALS.(Cont'd)**

- 3302. — Counterclaims, cross-claims, and third-party complaints.
- 3303. — Judgment on pleadings.
- 3304. Limitations and laches.
- 3305. Preliminary proceedings; depositions and discovery.
- 3306. Continuance and stay.
- 3307. Consolidation and severance.
- 3308. Judge.
- 3309. Jury.
- 3310. — In general.
- 3311. — Selection and impaneling of jurors.
- 3312. Counsel.
- 3313. Trial.
- 3314. Evidence and witnesses.
- 3315. Instructions.
- 3316. Verdict, findings, and conclusions.
- 3317. Judgment.
- 3318. — In general.
- 3319. — Finality of judgment.
  - (1). In general; necessity.
  - (2). What constitutes final judgment.
- 3320. — Mode of rendition or entry of judgment.
- 3321. — Judgment by confession or consent.
- 3322. — Default judgment and opening thereof.
- 3323. — Summary judgment.
  - (1). In general.
  - (2). As to immunity.
- 3324. — Enforcement of judgment.
- 3325. Taking case or question from jury; judgment as a matter of law.
- 3326. New trial, rehearing, or reconsideration.
- 3327. Amending, modifying, or vacating judgment or order; proceedings after judgment.
- 3328. Indigent parties; proceedings in forma pauperis.
- 3329. Sanctions.
- 3330. Compromise and settlement.
- 3331. Remedial matters.
- 3332. — In general.
- 3333. — Damages or other monetary relief.
- 3334. — Injunction.

**XVII. COURTS OF APPEALS.(Cont'd)**

- (1). In general.
- (2). Preliminary injunction; temporary restraining order.
- 3335. — Costs and attorney fees.
- 3336. — Interest.
- 3. EFFECT OF UNRESOLVED OR PENDING ISSUES.**
- 3351. In general.
- 3352. Particular issues.
- 3353. — In general.
- 3354. — Damages.
- 3355. — Interest.
- 3356. — Fees and costs.
- 3357. — Sanctions.
- 3358. Multiple claims or parties.
- 3359. — In general.
- 3360. — Particular cases.

**4. CERTIFICATION AND LEAVE TO APPEAL.**

- 3371. In general.
- 3372. Particular actions and rulings.
- 3373. — In general.
- 3374. — Multiple parties.
- 3375. — Class actions.
- 3376. — Multiple claims.
- 3377. — Summary judgment.
- 3378. Petition or application; time.
- 3379. Hearing, determination, and review.

**(D) PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW.****1. IN GENERAL.**

- 3391. In general; necessity.
- 3392. Mode and sufficiency of presentation.
- 3393. Effect of failure to preserve error.
- 3394. — In general.
- 3395. — Plain error.

**2. PARTICULAR GROUNDS OF REVIEW.**

*Mode and sufficiency of presentation, see ¶3392.*

- 3401. In general.
- 3402. Matters of substance.
- 3403. — In general.
- 3404. — Constitutional questions.
- 3405. — Defenses.
- 3406. Matters of procedure.
- 3407. — In general.
- 3408. — Dismissal or nonsuit in general.

**170B. FEDERAL COURTS****XVII. COURTS OF APPEALS.(Cont'd)**

- 3409. — Organization and jurisdiction of lower court; venue.
- 3410. — Parties, process, and notice.
- 3411. — Pleading.
- 3412. — Limitations and laches.
- 3413. — Preliminary proceedings; depositions and discovery.
- 3414. — Trial.
- 3415. — Evidence and witnesses.
  - (1). In general.
  - (2). Admission or exclusion of evidence.
  - (3). Sufficiency of evidence.
- 3416. — Instructions.
  - (1). In general.
  - (2). Requests and failure to give instructions; refusal of requested charge.
- 3417. — Verdict or findings.
- 3418. — Judgment and relief.
  - (1). In general.
  - (2). Summary judgment.
- 3419. — Taking case or question from jury; judgment as a matter of law.
- 3420. — New trial, rehearing, or reconsideration.
- 3421. — Amending, modifying, or vacating judgment or order; proceedings after judgment.
- 3422. — Costs and attorney fees.

**(E) PROCEEDINGS FOR TRANSFER OF CASE.**

- 3431. In general.
- 3432. Joinder or consolidation of appeals.
- 3433. Time of taking proceeding or filing notice of appeal.
- 3434. — In general.
- 3435. — Effect of delay and excuses in general.
- 3436. — Commencement and running of time in general.
- 3437. — Extension of time.
  - (1). In general.
  - (2). By agreement or court order.
  - (3). By motions after judgment in general.
  - (4). By motions to vacate, amend, or modify judgment.

**XVII. COURTS OF APPEALS.(Cont'd)**

- (5). By motions for new trial or rehearing.
- 3438. — Premature appeal.
- 3446. Notice of appeal, writ of error, or citation.
- 3447. — In general; necessity.
- 3448. — Requisites and sufficiency; defects.
- 3449. — Filing, service, and return.
- 3450. Entry, docketing, and appearance.
- 3451. Effect of transfer of cause or proceedings therefor.
- 3452. — In general.
- 3453. — Interlocutory or defective appeal.
- 3454. — Amendment of, vacation of, or relief from judgment.

**(F) SUPERSEDEAS OR STAY OF PROCEEDINGS.**

- 3461. In general.
- 3462. Injunction and temporary restraining order cases.
- 3463. Other particular cases.
- 3464. Bond or security.

**(G) RECORD.**

- 3471. In general.
- 3472. Matters to be shown by record.
- 3473. Scope and contents of record.
- 3474. Transcript of proceedings.
- 3475. — In general.
- 3476. — Order or designation and notice.
- 3477. Statement, description, or narrative of evidence or proceedings.
- 3478. Transmission and filing of record.
- 3479. Defects and objections.
- 3480. — In general.
- 3481. — Amendment, correction, or supplementation.
- 3482. Conclusiveness and impeachment.
- 3483. Questions presented for review.
- 3484. — In general.
- 3485. — Conduct of trial.
- 3486. — Evidence; witnesses.
- 3487. — Instructions.
- 3488. — Verdict, findings, or decision; amount of recovery; costs and fees.
- 3489. — Judgment; new trial or rehearing.
- 3490. Matters not apparent of record.

**170B. FEDERAL COURTS****XVII. COURTS OF APPEALS.(Cont'd)**

- 3491. — In general.
- 3492. — Matters appearing otherwise than by record in general; judicial notice.
- 3493. — Briefs.
- 3494. — Opinion of lower court.

**(H) BRIEFS.**

- 3501. In general.
- 3502. Statement of case or facts; appendix.
- 3503. Specification of errors; points and arguments.
- 3504. Defects, objections, and amendments; striking brief.
- 3505. Failure to file or serve, or to file or serve in time.

**(I) DISMISSAL, WITHDRAWAL, OR ABANDONMENT.**

- 3511. In general.
- 3512. Grounds for involuntary dismissal in general.
- 3513. Want of actual controversy; mootness and ripeness.
- 3514. — In general.
- 3515. — Particular cases.
- 3516. Want of jurisdiction.
- 3517. Proceedings frivolous or for delay.
- 3518. Review unnecessary or ineffectual.
- 3519. Dismissal on court's own motion.
- 3520. Motion for dismissal; hearing and determination.
- 3521. Order and effect of dismissal.
- 3522. — In general.
- 3523. — Reinstatement of appeal.

**(J) HEARING.**

- 3531. In general.
- 3532. Preliminary proceedings; dockets and calendars.
- 3533. Hearing without argument; summary calendar and disposition without opinion.
- 3534. Rehearing and reargument.

**(K) SCOPE AND EXTENT OF REVIEW.****1. IN GENERAL.**

- 3541. In general.
- 3542. Matters or evidence considered.
- 3543. Questions considered.

**XVII. COURTS OF APPEALS.(Cont'd)**

- 3544. — In general.
- 3545. — Matters not necessary to decision in review.
  - (1). In general.
  - (2). Specific questions.
- 3546. — Interlocutory, collateral, and supplementary proceedings and questions; pendent appellate jurisdiction.
  - (1). In general.
  - (2). On appeal from final judgment.
  - (3). On separate appeal from interlocutory judgment or order.
- 3547. Review dependent on mode of trial in lower court.
- 3548. Theory and grounds of decision of lower court.
- 3549. — In general.
- 3550. — Rulings as law of case.
- 3551. — Reasons for decision.
- 3552. — Grounds for sustaining decision not relied upon or considered.

**2. STANDARD OF REVIEW.**

- 3561. In general.
- 3562. De novo review in general.
- 3563. Discretion of lower court in general.
- 3564. — In general.
- 3565. — Abuse of discretion in general.
- 3566. Questions of law in general.
- 3567. — In general.
- 3568. — State or local law in general.
- 3569. — Territorial courts in general.
- 3570. — Diversity cases in general.
- 3571. Questions of fact in general.
- 3572. Mixed questions of law and fact in general.
- 3573. Constitutional questions in general.
- 3574. Statutes, regulations, and ordinances, questions concerning in general.
- 3575. Treaty questions in general.
- 3576. Procedural matters.
- 3577. — In general.
- 3578. — Dismissal or nonsuit in general.
- 3579. — What law governs and choice of law in general.
- 3580. — Preemption in general.
- 3581. — Jurisdiction.
  - (1). In general.



**170B. FEDERAL COURTS****XVII. COURTS OF APPEALS.(Cont'd)**

- (2). Supplemental jurisdiction.
- (3). Abstention.
- (4). Personal jurisdiction.
- 3582. — Venue.
  - (1). In general.
  - (2). Change or transfer of venue.
- 3583. — Forum non conveniens.
- 3584. — Conditions precedent.
- 3585. — Parties.
  - (1). In general.
  - (2). Standing.
  - (3). Class actions.
- 3586. — Process.
- 3587. — Pleading.
  - (1). In general.
  - (2). Judgment on the pleadings.
- 3588. — Limitations and laches.
- 3589. — Estoppel and waiver.
- 3590. — Preliminary proceedings.
- 3591. — Depositions and discovery.
- 3592. — Continuance and stay.
- 3593. — Consolidation and severance.
- 3594. — Judge.
- 3595. — Jury.
  - (1). In general.
  - (2). Selection and impaneling of jurors.
- 3596. — Counsel.
- 3597. — Trial.
- 3598. — Evidence.
  - (1). In general.
  - (2). Reception of evidence.
  - (3). — In general.
  - (4). — Admission or exclusion in general.
  - (5). — Probative value and prejudicial effect.
  - (6). Weight or preponderance of evidence in general.
  - (7). Inferences from evidence.
  - (8). Conflicting or undisputed evidence.
  - (9). Substantial evidence.
- 3599. — Witnesses.
  - (1). In general.
  - (2). Competency and examination.
  - (3). Credibility and impeachment.
- 3600. — Expert evidence and witnesses.

**XVII. COURTS OF APPEALS.(Cont'd)**

- 3601. — Instructions.
- 3602. — Verdict.
- 3603. — Findings.
  - (1). In general.
  - (2). “Clearly erroneous” standard of review in general.
  - (3). Findings of referee or master.
  - (4). Nature of evidence supporting findings.
  - (5). Conflicting or undisputed evidence.
  - (6). What constitutes clear error, and effect thereof.
  - (7). Definite and firm conviction of mistake.
- 3604. — Judgment.
  - (1). In general.
  - (2). Judgment by confession or consent.
  - (3). Default judgment and opening thereof.
  - (4). Summary judgment.
  - (5). Conclusiveness; res judicata and collateral estoppel.
  - (6). Enforcement of judgment.
- 3605. — Taking case or question from jury; judgment as a matter of law.
- 3606. — New trial, rehearing, or reconsideration.
  - (1). In general.
  - (2). Insufficiency of evidence.
  - (3). Inadequate or excessive damages.
  - (4). Newly discovered evidence.
- 3607. — Altering, amending, modifying, or vacating judgment or order; proceedings after judgment.
- 3608. — Proceedings for appeal.
- 3609. — Indigent parties; proceedings in forma pauperis.
  - (1). In general.
  - (2). Counsel.
- 3610. — Sanctions.
  - (1). In general.
  - (2). Discovery sanctions.
- 3611. — Compromise and settlement.
  - (1). In general.
  - (2). Class actions.
- 3612. Remedial matters.
- 3613. — In general.

**170B. FEDERAL COURTS****XVII. COURTS OF APPEALS.(Cont'd)**

- 3614. — Damages or other monetary relief.
  - (1). In general.
  - (2). Punitive damages.
- 3615. — Equity and equitable relief in general.
- 3616. — Injunction.
  - (1). In general.
  - (2). Preliminary injunction; temporary restraining order.
- 3617. — Costs and attorney fees.
- 3618. — Interest.
- 3619. Substantive matters.
- 3620. — In general.
- 3621. — Constitutional rights, civil rights, and discrimination in general.
- 3622. — Torts in general.
- 3623. — Property in general.
- 3624. — Water.
- 3625. — Governments and political subdivisions.
  - (1). In general.
  - (2). Immunity.
  - (3). Public records or information.
- 3626. — Government property, facilities, and funds.
- 3627. — Social Security, public assistance, and other government payments.
  - (1). In general.
  - (2). Medical assistance.
  - (3). Public housing.
- 3628. — Taxation.
- 3629. — Labor and employment.
  - (1). In general.
  - (2). Public employment in general.
  - (3). Pension and benefit plans.
  - (4). Labor relations.
  - (5). Wages, hours, and working conditions.
  - (6). Railway labor and employment.
  - (7). Employment discrimination.
- 3630. — Education.
- 3631. — Elections, voting, and political rights.
- 3632. — War, national emergency, and national security.
- 3633. — Contracts.
  - (1). In general.

**XVII. COURTS OF APPEALS.(Cont'd)**

- (2). Public contracts.
- 3634. — Trade, business, and finance.
  - (1). In general.
  - (2). Commerce.
  - (3). Antitrust.
  - (4). Banks and banking.
  - (5). Insurers and insurance.
  - (6). Securities regulation.
  - (7). Mortgages, liens, and security interests.
- 3635. — Intellectual property.
- 3636. — Environment and health.
- 3637. — Mental health.
- 3638. — Motor vehicles.
- 3639. — Carriers and public utilities.
  - (1). In general.
  - (2). Telecommunications.
- 3640. — Families and children.
- 3641. — Aliens, immigration, and citizenship.
  - (1). In general.
  - (2). Tort claims.
- 3642. — Foreign states or sovereigns.
- 3643. — Corporations and other organizations.
- 3644. — Criminal justice.
  - (1). In general.
  - (2). Arrest and pretrial detention.
  - (3). Imprisonment and incidents thereof.
- 3645. — Search, seizure, and confiscation.
- 3646. — Indians and Indian lands.
- 3647. — Racketeering.

**3. PRESUMPTIONS.**

- 3661. In general.
- 3662. Burden of showing error.
- 3663. Matters not shown by record.
- 3664. Pleadings; dismissal.
- 3665. — In general.
- 3666. — Judgment or dismissal on the pleadings.
- 3667. — Dismissal for failure to state a claim.
- 3668. — Dismissal for failure to plead with particularity.
- 3669. — Dismissal for lack of jurisdiction.